

CABLE TELEVISION CONSUMER PROTECTION AND COMPETITION ACT OF 1992

SEPTEMBER 14, 1992.—Ordered to be printed

Mr. DINGELL, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany S. 12]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 12), to amend title VI of the Communications Act of 1934 to ensure carriage on cable television of local news and other programming and to restore the right of local regulatory authorities to regulate cable television rates, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment, insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Cable Television Consumer Protection and Competition Act of 1992".

SEC. 2. FINDINGS; POLICY; DEFINITIONS.

(a) *FINDINGS.—The Congress finds and declares the following:*

(1) *Pursuant to the Cable Communications Policy Act of 1984, rates for cable television services have been deregulated in approximately 97 percent of all franchises since December 29, 1986. Since rate deregulation, monthly rates for the lowest priced basic cable service have increased by 40 percent or more for 28 percent of cable television subscribers. Although the average number of basic channels has increased from about 24 to 30, average monthly rates have increased by 29 percent during*

the same period. The average monthly cable rate has increased almost 3 times as much as the Consumer Price Index since rate deregulation.

(2) For a variety of reasons, including local franchising requirements and the extraordinary expense of constructing more than one cable television system to serve a particular geographic area, most cable television subscribers have no opportunity to select between competing cable systems. Without the presence of another multichannel video programming distributor, a cable system faces no local competition. The result is undue market power for the cable operator as compared to that of consumers and video programmers.

(3) There has been a substantial increase in the penetration of cable television systems over the past decade. Nearly 56,000,000 households, over 60 percent of the households with televisions, subscribe to cable television, and this percentage is almost certain to increase. As a result of this growth, the cable television industry has become a dominant nationwide video medium.

(4) The cable industry has become highly concentrated. The potential effects of such concentration are barriers to entry for new programmers and a reduction in the number of media voices available to consumers.

(5) The cable industry has become vertically integrated; cable operators and cable programmers often have common ownership. As a result, cable operators have the incentive and ability to favor their affiliated programmers. This could make it more difficult for noncable-affiliated programmers to secure carriage on cable systems. Vertically integrated program suppliers also have the incentive and ability to favor their affiliated cable operators over nonaffiliated cable operators and programming distributors using other technologies.

(6) There is a substantial governmental and First Amendment interest in promoting a diversity of views provided through multiple technology media.

(7) There is a substantial governmental and First Amendment interest in ensuring that cable subscribers have access to local noncommercial educational stations which Congress has authorized, as expressed in section 396(a)(5) of the Communications Act of 1934. The distribution of unique noncommercial, educational programming services advances that interest.

(8) The Federal Government has a substantial interest in making all nonduplicative local public television services available on cable systems because—

(A) public television provides educational and informational programming to the Nation's citizens, thereby advancing the Government's compelling interest in educating its citizens;

(B) public television is a local community institution, supported through local tax dollars and voluntary citizen contributions in excess of \$10,800,000,000 since 1972, that provides public service programming that is responsive to the needs and interests of the local community;

(C) the Federal Government, in recognition of public television's integral role in serving the educational and informational needs of local communities, has invested more than \$3,000,000,000 in public broadcasting since 1969; and

(D) absent carriage requirements there is a substantial likelihood that citizens, who have supported local public television services, will be deprived of those services.

(9) The Federal Government has a substantial interest in having cable systems carry the signals of local commercial television stations because the carriage of such signals is necessary to serve the goals contained in section 307(b) of the Communications Act of 1934 of providing a fair, efficient, and equitable distribution of broadcast services.

(10) A primary objective and benefit of our Nation's system of regulation of television broadcasting is the local origination of programming. There is a substantial governmental interest in ensuring its continuation.

(11) Broadcast television stations continue to be an important source of local news and public affairs programming and other local broadcast services critical to an informed electorate.

(12) Broadcast television programming is supported by revenues generated from advertising broadcast over stations. Such programming is otherwise free to those who own television sets and do not require cable transmission to receive broadcast signals. There is a substantial governmental interest in promoting the continued availability of such free television programming, especially for viewers who are unable to afford other means of receiving programming.

(13) As a result of the growth of cable television, there has been a marked shift in market share from broadcast television to cable television services.

(14) Cable television systems and broadcast television stations increasingly compete for television advertising revenues. As the proportion of households subscribing to cable television increases, proportionately more advertising revenues will be re-allocated from broadcast to cable television systems.

(15) A cable television system which carries the signal of a local television broadcaster is assisting the broadcaster to increase its viewership, and thereby attract additional advertising revenues that otherwise might be earned by the cable system operator. As a result, there is an economic incentive for cable systems to terminate the retransmission of the broadcast signal, refuse to carry new signals, or reposition a broadcast signal to a disadvantageous channel position. There is a substantial likelihood that absent the reimposition of such a requirement, additional local broadcast signals will be deleted, repositioned, or not carried.

(16) As a result of the economic incentive that cable systems have to delete, reposition, or not carry local broadcast signals, coupled with the absence of a requirement that such systems carry local broadcast signals, the economic viability of free local broadcast television and its ability to originate quality local programming will be seriously jeopardized.

(17) Consumers who subscribe to cable television often do so to obtain local broadcast signals which they otherwise would not be able to receive, or to obtain improved signals. Most subscribers to cable television systems do not or cannot maintain antennas to receive broadcast television services, do not have input selector switches to convert from a cable to antenna reception system, or cannot otherwise receive broadcast television services. The regulatory system created by the Cable Communications Policy Act of 1984 was premised upon the continued existence of mandatory carriage obligations for cable systems, ensuring that local stations would be protected from anticompetitive conduct by cable systems.

(18) Cable television systems often are the single most efficient distribution system for television programming. A Government mandate for a substantial societal investment in alternative distribution systems for cable subscribers, such as the "A/B" input selector antenna system, is not an enduring or feasible method of distribution and is not in the public interest.

(19) At the same time, broadcast programming that is carried remains the most popular programming on cable systems, and a substantial portion of the benefits for which consumers pay cable systems is derived from carriage of the signals of network affiliates, independent television stations, and public television stations. Also cable programming placed on channels adjacent to popular off-the-air signals obtains a larger audience than on other channel positions. Cable systems, therefore, obtain great benefits from local broadcast signals which, until now, they have been able to obtain without the consent of the broadcaster or any copyright liability. This has resulted in an effective subsidy of the development of cable systems by local broadcasters. While at one time, when cable systems did not attempt to compete with local broadcasters for programming, audience, and advertising, this subsidy may have been appropriate, it is so no longer and results in a competitive imbalance between the 2 industries.

(20) The Cable Communications Policy Act of 1984, in its amendments to the Communications Act of 1934, limited the regulatory authority of franchising authorities over cable operators. Franchising authorities are finding it difficult under the current regulatory scheme to deny renewals to cable systems that are not adequately serving cable subscribers.

(21) Cable systems should be encouraged to carry low-power television stations licensed to the communities served by those systems where the low-power station creates and broadcasts, as a substantial part of its programming day, local programming.

(b) STATEMENT OF POLICY.—It is the policy of the Congress in this Act to—

(1) promote the availability to the public of a diversity of views and information through cable television and other video distribution media;

(2) rely on the marketplace, to the maximum extent feasible, to achieve that availability;

(3) ensure that cable operators continue to expand, where economically justified, their capacity and the programs offered over their cable systems;

(4) where cable television systems are not subject to effective competition, ensure that consumer interests are protected in receipt of cable service; and

(5) ensure that cable television operators do not have undue market power vis-a-vis video programmers and consumers.

(c) **DEFINITIONS.**—Section 602 of the Communications Act of 1934 (47 U.S.C. 531) is amended—

(1) by redesignating paragraph (16) as paragraph (19);

(2) by striking “and” at the end of paragraph (15);

(3) by redesignating paragraphs (11) through (15) as paragraphs (13) through (17), respectively;

(4) by redesignating paragraphs (1) through (10) as paragraphs (2) through (11), respectively;

(5) by inserting before paragraph (2) (as so redesignated) the following new paragraph:

“(1) the term ‘activated channels’ means those channels engineered at the headend of a cable system for the provision of services generally available to residential subscribers of the cable system, regardless of whether such services actually are provided, including any channel designated for public, educational, or governmental use;”;

(6) by inserting after paragraph (11) (as so redesignated) the following new paragraph:

“(12) the term ‘multichannel video programming distributor’ means a person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, or a television receive-only satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming;” and

(7) by inserting after paragraph (17) (as so redesignated) the following new paragraph:

“(18) the term ‘usable activated channels’ means activated channels of a cable system, except those channels whose use for the distribution of broadcast signals would conflict with technical and safety regulations as determined by the Commission; and”.

SEC. 3. REGULATION OF RATES.

(a) **AMENDMENT.**—Section 623 of the Communications Act of 1934 (47 U.S.C. 543) is amended to read as follows:

“SEC. 623. REGULATION OF RATES.

“(a) **COMPETITION PREFERENCE; LOCAL AND FEDERAL REGULATION.**—

“(1) **IN GENERAL.**—No Federal agency or State may regulate the rates for the provision of cable service except to the extent provided under this section and section 612. Any franchising authority may regulate the rates for the provision of cable service, or any other communications service provided over a cable system to cable subscribers, but only to the extent provided under this section. No Federal agency, State, or franchising au-

thority may regulate the rates for cable service of a cable system that is owned or operated by a local government or franchising authority within whose jurisdiction that cable system is located and that is the only cable system located within such jurisdiction.

"(2) **PREFERENCE FOR COMPETITION.**—If the Commission finds that a cable system is subject to effective competition, the rates for the provision of cable service by such system shall not be subject to regulation by the Commission or by a State or franchising authority under this section. If the Commission finds that a cable system is not subject to effective competition—

"(A) the rates for the provision of basic cable service shall be subject to regulation by a franchising authority, or by the Commission if the Commission exercises jurisdiction pursuant to paragraph (6), in accordance with the regulations prescribed by the Commission under subsection (b); and

"(B) the rates for cable programming services shall be subject to regulation by the Commission under subsection (c).

"(3) **QUALIFICATION OF FRANCHISING AUTHORITY.**—A franchising authority that seeks to exercise the regulatory jurisdiction permitted under paragraph (2)(A) shall file with the Commission a written certification that—

"(A) the franchising authority will adopt and administer regulations with respect to the rates subject to regulation under this section that are consistent with the regulations prescribed by the Commission under subsection (b);

"(B) the franchising authority has the legal authority to adopt, and the personnel to administer, such regulations; and

"(C) procedural laws and regulations applicable to rate regulation proceedings by such authority provide a reasonable opportunity for consideration of the views of interested parties.

"(4) **APPROVAL BY COMMISSION.**—A certification filed by a franchising authority under paragraph (3) shall be effective 30 days after the date on which it is filed unless the Commission finds, after notice to the authority and a reasonable opportunity for the authority to comment, that—

"(A) the franchising authority has adopted or is administering regulations with respect to the rates subject to regulation under this section that are not consistent with the regulations prescribed by the Commission under subsection (b);

"(B) the franchising authority does not have the legal authority to adopt, or the personnel to administer, such regulations; or

"(C) procedural laws and regulations applicable to rate regulation proceedings by such authority do not provide a reasonable opportunity for consideration of the views of interested parties.

If the Commission disapproves a franchising authority's certification, the Commission shall notify the franchising authority of any revisions or modifications necessary to obtain approval.

"(5) **REVOCATION OF JURISDICTION.**—Upon petition by a cable operator or other interested party, the Commission shall review the regulation of cable system rates by a franchising authority under this subsection. A copy of the petition shall be provided to the franchising authority by the person filing the petition. If the Commission finds that the franchising authority has acted inconsistently with the requirements of this subsection, the Commission shall grant appropriate relief. If the Commission, after the franchising authority has had a reasonable opportunity to comment, determines that the State and local laws and regulations are not in conformance with the regulations prescribed by the Commission under subsection (b), the Commission shall revoke the jurisdiction of such authority.

"(6) **EXERCISE OF JURISDICTION BY COMMISSION.**—If the Commission disapproves a franchising authority's certification under paragraph (4), or revokes such authority's jurisdiction under paragraph (5), the Commission shall exercise the franchising authority's regulatory jurisdiction under paragraph (2)(A) until the franchising authority has qualified to exercise that jurisdiction by filing a new certification that meets the requirements of paragraph (3). Such new certification shall be effective upon approval by the Commission. The Commission shall act to approve or disapprove any such new certification within 90 days after the date it is filed.

"(b) **ESTABLISHMENT OF BASIC SERVICE TIER RATE REGULATIONS.**—

"(1) **COMMISSION OBLIGATION TO SUBSCRIBERS.**—The Commission shall, by regulation, ensure that the rates for the basic service tier are reasonable. Such regulations shall be designed to achieve the goal of protecting subscribers of any cable system that is not subject to effective competition from rates for the basic service tier that exceed the rates that would be charged for the basic service tier if such cable system were subject to effective competition.

"(2) **COMMISSION REGULATIONS.**—Within 180 days after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, the Commission shall prescribe, and periodically thereafter revise, regulations to carry out its obligations under paragraph (1). In prescribing such regulations, the Commission—

"(A) shall seek to reduce the administrative burdens on subscribers, cable operators, franchising authorities, and the Commission;

"(B) may adopt formulas or other mechanisms and procedures in complying with the requirements of subparagraph (A); and

"(C) shall take into account the following factors:

"(i) the rates for cable systems, if any, that are subject to effective competition;

"(ii) the direct costs (if any) of obtaining, transmitting, and otherwise providing signals carried on the

basic service tier, including signals and services carried on the basic service tier pursuant to paragraph (7)(B), and changes in such costs;

"(iii) only such portion of the joint and common costs (if any) of obtaining, transmitting, and otherwise providing such signals as is determined, in accordance with regulations prescribed by the Commission, to be reasonably and properly allocable to the basic service tier, and changes in such costs;

"(iv) the revenues (if any) received by a cable operator from advertising from programming that is carried as part of the basic service tier or from other consideration obtained in connection with the basic service tier;

"(v) the reasonably and properly allocable portion of any amount assessed as a franchise fee, tax, or charge of any kind imposed by any State or local authority on the transactions between cable operators and cable subscribers or any other fee, tax, or assessment of general applicability imposed by a governmental entity applied against cable operators or cable subscribers;

"(vi) any amount required, in accordance with paragraph (4), to satisfy franchise requirements to support public, educational, or governmental channels or the use of such channels or any other services required under the franchise; and

"(vii) a reasonable profit, as defined by the Commission consistent with the Commission's obligations to subscribers under paragraph (1).

"(3) **EQUIPMENT.**—The regulations prescribed by the Commission under this subsection shall include standards to establish, on the basis of actual cost, the price or rate for—

"(A) installation and lease of the equipment used by subscribers to receive the basic service tier, including a converter box and a remote control unit and, if requested by the subscriber, such addressable converter box or other equipment as is required to access programming described in paragraph (8); and

"(B) installation and monthly use of connections for additional television receivers.

"(4) **COSTS OF FRANCHISE REQUIREMENTS.**—The regulations prescribed by the Commission under this subsection shall include standards to identify costs attributable to satisfying franchise requirements to support public, educational, and governmental channels or the use of such channels or any other services required under the franchise.

"(5) **IMPLEMENTATION AND ENFORCEMENT.**—The regulations prescribed by the Commission under this subsection shall include additional standards, guidelines, and procedures concerning the implementation and enforcement of such regulations, which shall include—

"(A) procedures by which cable operators may implement and franchising authorities may enforce the regulations prescribed by the Commission under this subsection;

"(B) procedures for the expeditious resolution of disputes between cable operators and franchising authorities concerning the administration of such regulations;

"(C) standards and procedures to prevent unreasonable charges for changes in the subscriber's selection of services or equipment subject to regulation under this section, which standards shall require that charges for changing the service tier selected shall be based on the cost of such change and shall not exceed nominal amounts when the system's configuration permits changes in service tier selection to be effected solely by coded entry on a computer terminal or by other similarly simple method; and

"(D) standards and procedures to assure that subscribers receive notice of the availability of the basic service tier required under this section.

"(6) NOTICE.—The procedures prescribed by the Commission pursuant to paragraph (5)(A) shall require a cable operator to provide 30 days' advance notice to a franchising authority of any increase proposed in the price to be charged for the basic service tier.

"(7) COMPONENTS OF BASIC TIER SUBJECT TO RATE REGULATION.—

"(A) MINIMUM CONTENTS.—Each cable operator of a cable system shall provide its subscribers a separately available basic service tier to which subscription is required for access to any other tier of service. Such basic service tier shall, at a minimum, consist of the following:

"(i) All signals carried in fulfillment of the requirements of sections 614 and 615.

"(ii) Any public, educational, and governmental access programming required by the franchise of the cable system to be provided to subscribers.

"(iii) Any signal of any television broadcast station that is provided by the cable operator to any subscriber, except a signal which is secondarily transmitted by a satellite carrier beyond the local service area of such station.

"(B) PERMITTED ADDITIONS TO BASIC TIER.—A cable operator may add additional video programming signals or services to the basic service tier. Any such additional signals or services provided on the basic service tier shall be provided to subscribers at rates determined under the regulations prescribed by the Commission under this subsection.

"(8) BUY-THROUGH OF OTHER TIERS PROHIBITED.—

"(A) PROHIBITION.—A cable operator may not require the subscription to any tier other than the basic service tier required by paragraph (7) as a condition of access to video programming offered on a per channel or per program basis. A cable operator may not discriminate between subscribers to the basic service tier and other subscribers with regard to the rates charged for video programming offered on a per channel or per program basis.

"(B) EXCEPTION; LIMITATION.—The prohibition in subparagraph (A) shall not apply to a cable system that, by

reason of the lack of addressable converter boxes or other technological limitations, does not permit the operator to offer programming on a per channel or per program basis in the same manner required by subparagraph (A). This subparagraph shall not be available to any cable operator after—

“(i) the technology utilized by the cable system is modified or improved in a way that eliminates such technological limitation; or

“(ii) 10 years after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, subject to subparagraph (C).

“(C) **WAIVER.**—If, in any proceeding initiated at the request of any cable operator, the Commission determines that compliance with the requirements of subparagraph (A) would require the cable operator to increase its rates, the Commission may, to the extent consistent with the public interest, grant such cable operator a waiver from such requirements for such specified period as the Commission determines reasonable and appropriate.

“(c) **REGULATION OF UNREASONABLE RATES.**—

“(1) **COMMISSION REGULATIONS.**—Within 180 days after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, the Commission shall, by regulation, establish the following:

“(A) criteria prescribed in accordance with paragraph (2) for identifying, in individual cases, rates for cable programming services that are unreasonable;

“(B) fair and expeditious procedures for the receipt, consideration, and resolution of complaints from any subscriber, franchising authority, or other relevant State or local government entity alleging that a rate for cable programming services charged by a cable operator violates the criteria prescribed under subparagraph (A), which procedures shall include the minimum showing that shall be required for a complaint to obtain Commission consideration and resolution of whether the rate in question is unreasonable; and

“(C) the procedures to be used to reduce rates for cable programming services that are determined by the Commission to be unreasonable and to refund such portion of the rates or charges that were paid by subscribers after the filing of such complaint and that are determined to be unreasonable.

“(2) **FACTORS TO BE CONSIDERED.**—In establishing the criteria for determining in individual cases whether rates for cable programming services are unreasonable under paragraph (1)(A), the Commission shall consider, among other factors—

“(A) the rates for similarly situated cable systems offering comparable cable programming services, taking into account similarities in facilities, regulatory and governmental costs, the number of subscribers, and other relevant factors;

“(B) the rates for cable systems, if any, that are subject to effective competition;

"(C) the history of the rates for cable programming services of the system, including the relationship of such rates to changes in general consumer prices;

"(D) the rates, as a whole, for all the cable programming, cable equipment, and cable services provided by the system, other than programming provided on a per channel or per program basis;

"(E) capital and operating costs of the cable system, including the quality and costs of the customer service provided by the cable system; and

"(F) the revenues (if any) received by a cable operator from advertising from programming that is carried as part of the service for which a rate is being established, and changes in such revenues, or from other consideration obtained in connection with the cable programming services concerned.

"(3) **LIMITATION ON COMPLAINTS CONCERNING EXISTING RATES.**—Except during the 180-day period following the effective date of the regulations prescribed by the Commission under paragraph (1), the procedures established under subparagraph (B) of such paragraph shall be available only with respect to complaints filed within a reasonable period of time following a change in rates that is initiated after that effective date, including a change in rates that results from a change in that system's service tiers.

"(d) **UNIFORM RATE STRUCTURE REQUIRED.**—A cable operator shall have a rate structure, for the provision of cable service, that is uniform throughout the geographic area in which cable service is provided over its cable system.

"(e) **DISCRIMINATION; SERVICES FOR THE HEARING IMPAIRED.**—Nothing in this title shall be construed as prohibiting any Federal agency, State, or a franchising authority from—

"(1) prohibiting discrimination among subscribers and potential subscribers to cable service, except that no Federal agency, State, or franchising authority may prohibit a cable operator from offering reasonable discounts to senior citizens or other economically disadvantaged group discounts; or

"(2) requiring and regulating the installation or rental of equipment which facilitates the reception of cable service by hearing impaired individuals.

"(f) **NEGATIVE OPTION BILLING PROHIBITED.**—A cable operator shall not charge a subscriber for any service or equipment that the subscriber has not affirmatively requested by name. For purposes of this subsection, a subscriber's failure to refuse a cable operator's proposal to provide such service or equipment shall not be deemed to be an affirmative request for such service or equipment.

"(g) **COLLECTION OF INFORMATION.**—The Commission shall, by regulation, require cable operators to file with the Commission or a franchising authority, as appropriate, within one year after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992 and annually thereafter, such financial information as may be needed for purposes of administering and enforcing this section.

"(h) PREVENTION OF EVASIONS.—Within 180 days after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, the Commission shall, by regulation, establish standards, guidelines, and procedures to prevent evasions, including evasions that result from retiering, of the requirements of this section and shall, thereafter, periodically review and revise such standards, guidelines, and procedures.

"(i) SMALL SYSTEM BURDENS.—In developing and prescribing regulations pursuant to this section, the Commission shall design such regulations to reduce the administrative burdens and cost of compliance for cable systems that have 1,000 or fewer subscribers.

"(j) RATE REGULATION AGREEMENTS.—During the term of an agreement made before July 1, 1990, by a franchising authority and a cable operator providing for the regulation of basic cable service rates, where there was not effective competition under Commission rules in effect on that date, nothing in this section (or the regulations thereunder) shall abridge the ability of such franchising authority to regulate rates in accordance with such an agreement.

"(k) REPORTS ON AVERAGE PRICES.—The Commission shall annually publish statistical reports on the average rates for basic cable service and other cable programming, and for converter boxes, remote control units, and other equipment, of—

"(1) cable systems that the Commission has found are subject to effective competition under subsection (a)(2), compared with

"(2) cable systems that the Commission has found are not subject to such effective competition.

"(l) DEFINITIONS.—As used in this section—

"(1) The term 'effective competition' means that—

"(A) fewer than 30 percent of the households in the franchise area subscribe to the cable service of a cable system;

"(B) the franchise area is—

"(i) served by at least two unaffiliated multichannel video programming distributors each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and

"(ii) the number of households subscribing to programming services offered by multichannel video programming distributors other than the largest multichannel video programming distributor exceeds 15 percent of the households in the franchise area; or

"(C) a multichannel video programming distributor operated by the franchising authority for that franchise area offers video programming to at least 50 percent of the households in that franchise area.

"(2) The term 'cable programming service' means any video programming provided over a cable system, regardless of service tier, including installation or rental of equipment used for the receipt of such video programming, other than (A) video programming carried on the basic service tier, and (B) video programming offered on a per channel or per program basis."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect 180 days after the date of enactment of this Act,

except that the authority of the Federal Communications Commission to prescribe regulations is effective on such date of enactment.

SEC. 4. CARRIAGE OF LOCAL COMMERCIAL TELEVISION SIGNALS.

Part II of title VI of the Communications Act of 1934 is amended by inserting after section 613 (47 U.S.C. 533) the following new section:

"SEC. 614. CARRIAGE OF LOCAL COMMERCIAL TELEVISION SIGNALS.

"(a) CARRIAGE OBLIGATIONS.—Each cable operator shall carry, on the cable system of that operator, the signals of local commercial television stations and qualified low power stations as provided by this section. Carriage of additional broadcast television signals on such system shall be at the discretion of such operator, subject to section 325(b).

"(b) SIGNALS REQUIRED.—

"(1) IN GENERAL.—(A) A cable operator of a cable system with 12 or fewer usable activated channels shall carry the signals of at least three local commercial television stations, except that if such a system has 300 or fewer subscribers, it shall not be subject to any requirements under this section so long as such system does not delete from carriage by that system any signal of a broadcast television station.

"(B) A cable operator of a cable system with more than 12 usable activated channels shall carry the signals of local commercial television stations, up to one-third of the aggregate number of usable activated channels of such system.

"(2) SELECTION OF SIGNALS.—Whenever the number of local commercial television stations exceeds the maximum number of signals a cable system is required to carry under paragraph (1), the cable operator shall have discretion in selecting which such stations shall be carried on its cable system, except that—

"(A) under no circumstances shall a cable operator carry a qualified low power station in lieu of a local commercial television station; and

"(B) if the cable operator elects to carry an affiliate of a broadcast network (as such term is defined by the Commission by regulation), such cable operator shall carry the affiliate of such broadcast network whose city of license reference point, as defined in section 76.53 of title 47, Code of Federal Regulations (in effect on January 1, 1991), or any successor regulation thereto, is closest to the principal headend of the cable system.

"(3) CONTENT TO BE CARRIED.—(A) A cable operator shall carry in its entirety, on the cable system of that operator, the primary video, accompanying audio, and line 21 closed caption transmission of each of the local commercial television stations carried on the cable system and, to the extent technically feasible, program-related material carried in the vertical blanking interval or on subcarriers. Retransmission of other material in the vertical blanking interval or other nonprogram-related material (including teletext and other subscription and advertiser-supported information services) shall be at the discretion of the cable operator. Where appropriate and feasible, operators may delete signal enhancements, such as ghost-canceling, from the

broadcast signal and employ such enhancements at the system headend or headends.

"(B) The cable operator shall carry the entirety of the program schedule of any television station carried on the cable system unless carriage of specific programming is prohibited, and other programming authorized to be substituted, under section 76.67 or subpart F of part 76 of title 47, Code of Federal Regulations (as in effect on January 1, 1991), or any successor regulations thereto.

"(4) SIGNAL QUALITY.—

"(A) NONDEGRADATION; TECHNICAL SPECIFICATIONS.—

The signals of local commercial television stations that a cable operator carries shall be carried without material degradation. The Commission shall adopt carriage standards to ensure that, to the extent technically feasible, the quality of signal processing and carriage provided by a cable system for the carriage of local commercial television stations will be no less than that provided by the system for carriage of any other type of signal.

"(B) ADVANCED TELEVISION.—At such time as the Commission prescribes modifications of the standards for television broadcast signals, the Commission shall initiate a proceeding to establish any changes in the signal carriage requirements of cable television systems necessary to ensure cable carriage of such broadcast signals of local commercial television stations which have been changed to conform with such modified standards.

"(5) DUPLICATION NOT REQUIRED.—Notwithstanding paragraph (1), a cable operator shall not be required to carry the signal of any local commercial television station that substantially duplicates the signal of another local commercial television station which is carried on its cable system, or to carry the signals of more than one local commercial television station affiliated with a particular broadcast network (as such term is defined by regulation). If a cable operator elects to carry on its cable system a signal which substantially duplicates the signal of another local commercial television station carried on the cable system, or to carry on its system the signals of more than one local commercial television station affiliated with a particular broadcast network, all such signals shall be counted toward the number of signals the operator is required to carry under paragraph (1).

"(6) CHANNEL POSITIONING.—Each signal carried in fulfillment of the carriage obligations of a cable operator under this section shall be carried on the cable system channel number on which the local commercial television station is broadcast over the air, or on the channel on which it was carried on July 19, 1985, or on the channel on which it was carried on January 1, 1992, at the election of the station, or on such other channel number as is mutually agreed upon by the station and the cable operator. Any dispute regarding the positioning of a local commercial television station shall be resolved by the Commission.

"(7) SIGNAL AVAILABILITY.—Signals carried in fulfillment of the requirements of this section shall be provided to every

subscriber of a cable system. Such signals shall be viewable via cable on all television receivers of a subscriber which are connected to a cable system by a cable operator or for which a cable operator provides a connection. If a cable operator authorizes subscribers to install additional receiver connections, but does not provide the subscriber with such connections, or with the equipment and materials for such connections, the operator shall notify such subscribers of all broadcast stations carried on the cable system which cannot be viewed via cable without a converter box and shall offer to sell or lease such a converter box to such subscribers at rates in accordance with section 623(b)(3).

"(8) IDENTIFICATION OF SIGNALS CARRIED.—A cable operator shall identify, upon request by any person, the signals carried on its system in fulfillment of the requirements of this section.

"(9) NOTIFICATION.—A cable operator shall provide written notice to a local commercial television station at least 30 days prior to either deleting from carriage or repositioning that station. No deletion or repositioning of a local commercial television station shall occur during a period in which major television ratings services measure the size of audiences of local television stations. The notification provisions of this paragraph shall not be used to undermine or evade the channel positioning or carriage requirements imposed upon cable operators under this section.

"(10) COMPENSATION FOR CARRIAGE.—A cable operator shall not accept or request monetary payment or other valuable consideration in exchange either for carriage of local commercial television stations in fulfillment of the requirements of this section or for the channel positioning rights provided to such stations under this section, except that—

"(A) any such station may be required to bear the costs associated with delivering a good quality signal or a base-band video signal to the principal headend of the cable system;

"(B) a cable operator may accept payments from stations which would be considered distant signals under section 111 of title 17, United States Code, as indemnification for any increased copyright liability resulting from carriage of such signal; and

"(C) a cable operator may continue to accept monetary payment or other valuable consideration in exchange for carriage or channel positioning of the signal of any local commercial television station carried in fulfillment of the requirements of this section, through, but not beyond, the date of expiration of an agreement thereon between a cable operator and a local commercial television station entered into prior to June 26, 1990.

"(c) LOW POWER STATION CARRIAGE OBLIGATION.—

"(1) REQUIREMENT.—If there are not sufficient signals of full power local commercial television stations to fill the channels set aside under subsection (b)—

"(A) a cable operator of a cable system with a capacity of 35 or fewer usable activated channels shall be required to carry one qualified low power station; and

"(B) a cable operator of a cable system with a capacity of more than 35 usable activated channels shall be required to carry two qualified low power stations.

"(2) *USE OF PUBLIC, EDUCATIONAL, OR GOVERNMENTAL CHANNELS.*—A cable operator required to carry more than one signal of a qualified low power station under this subsection may do so, subject to approval by the franchising authority pursuant to section 611, by placing such additional station on public, educational, or governmental channels not in use for their designated purposes.

"(d) *REMEDIES.*—

"(1) *COMPLAINTS BY BROADCAST STATIONS.*—Whenever a local commercial television station believes that a cable operator has failed to meet its obligations under this section, such station shall notify the operator, in writing, of the alleged failure and identify its reasons for believing that the cable operator is obligated to carry the signal of such station or has otherwise failed to comply with the channel positioning or repositioning or other requirements of this section. The cable operator shall, within 30 days of such written notification, respond in writing to such notification and either commence to carry the signal of such station in accordance with the terms requested or state its reasons for believing that it is not obligated to carry such signal or is in compliance with the channel positioning and repositioning and other requirements of this section. A local commercial television station that is denied carriage or channel positioning or repositioning in accordance with this section by a cable operator may obtain review of such denial by filing a complaint with the Commission. Such complaint shall allege the manner in which such cable operator has failed to meet its obligations and the basis for such allegations.

"(2) *OPPORTUNITY TO RESPOND.*—The Commission shall afford such cable operator an opportunity to present data and arguments to establish that there has been no failure to meet its obligations under this section.

"(3) *REMEDIAL ACTIONS; DISMISSAL.*—Within 120 days after the date a complaint is filed, the Commission shall determine whether the cable operator has met its obligations under this section. If the Commission determines that the cable operator has failed to meet such obligations, the Commission shall order the cable operator to reposition the complaining station or, in the case of an obligation to carry a station, to commence carriage of the station and to continue such carriage for at least 12 months. If the Commission determines that the cable operator has fully met the requirements of this section, it shall dismiss the complaint.

"(e) *INPUT SELECTOR SWITCH RULES ABOLISHED.*—No cable operator shall be required—

"(1) to provide or make available any input selector switch as defined in section 76.5(mm) of title 47, Code of Federal Regulations, or any comparable device; or

"(2) to provide information to subscribers about input selector switches or comparable devices.

"(f) REGULATIONS BY COMMISSION.—Within 180 days after the date of enactment of this section, the Commission shall, following a rulemaking proceeding, issue regulations implementing the requirements imposed by this section. Such implementing regulations shall include necessary revisions to update section 76.51 of title 47 of the Code of Federal Regulations.

"(g) SALES PRESENTATIONS AND PROGRAM LENGTH COMMERCIALS.—

"(1) CARRIAGE PENDING PROCEEDING.—Pending the outcome of the proceeding under paragraph (2), nothing in this Act shall require a cable operator to carry on any tier, or prohibit a cable operator from carrying on any tier, the signal of any commercial television station or video programming service that is predominantly utilized for the transmission of sales presentations or program length commercials.

"(2) PROCEEDING CONCERNING CERTAIN STATIONS.—Within 270 days after the date of enactment of this section, the Commission, notwithstanding prior proceedings to determine whether broadcast television stations that are predominantly utilized for the transmission of sales presentations or program length commercials are serving the public interest, convenience, and necessity, shall complete a proceeding in accordance with this paragraph to determine whether broadcast television stations that are predominantly utilized for the transmission of sales presentations or program length commercials are serving the public interest, convenience, and necessity. In conducting such proceeding, the Commission shall provide appropriate notice and opportunity for public comment. The Commission shall consider the viewing of such stations, the level of competing demands for the spectrum allocated to such stations, and the role of such stations in providing competition to nonbroadcast services offering similar programming. In the event that the Commission concludes that one or more of such stations are serving the public interest, convenience, and necessity, the Commission shall qualify such stations as local commercial television stations for purposes of subsection (a). In the event that the Commission concludes that one or more of such stations are not serving the public interest, convenience, and necessity, the Commission shall allow the licensees of such stations a reasonable period within which to provide different programming, and shall not deny such stations a renewal expectancy solely because their programming consisted predominantly of sales presentations or program length commercials.

"(h) DEFINITIONS.—

"(1) LOCAL COMMERCIAL TELEVISION STATION.—

"(A) IN GENERAL.—For purposes of this section, the term 'local commercial television station' means any full power television broadcast station, other than a qualified noncommercial educational television station within the meaning of section 615(l)(1), licensed and operating on a channel regularly assigned to its community by the Com-

mission that, with respect to a particular cable system, is within the same television market as the cable system.

"(B) EXCLUSIONS.—The term 'local commercial television station' shall not include—

"(i) low power television stations, television translator stations, and passive repeaters which operate pursuant to part 74 of title 47, Code of Federal Regulations, or any successor regulations thereto;

"(ii) a television broadcast station that would be considered a distant signal under section 111 of title 17, United States Code, if such station does not agree to indemnify the cable operator for any increased copyright liability resulting from carriage on the cable system; or

"(iii) a television broadcast station that does not deliver to the principal headend of a cable system either a signal level of -45dBm for UHF signals or -49dBm for VHF signals at the input terminals of the signal processing equipment, if such station does not agree to be responsible for the costs of delivering to the cable system a signal of good quality or a baseband video signal.

"(C) MARKET DETERMINATIONS.—(i) For purposes of this section, a broadcasting station's market shall be determined in the manner provided in section 73.3555(d)(3)(i) of title 47, Code of Federal Regulations, as in effect on May 1, 1991, except that, following a written request, the Commission may, with respect to a particular television broadcast station, include additional communities within its television market or exclude communities from such station's television market to better effectuate the purposes of this section. In considering such requests, the Commission may determine that particular communities are part of more than one television market.

"(ii) In considering requests filed pursuant to clause (i), the Commission shall afford particular attention to the value of localism by taking into account such factors as—

"(I) whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community;

"(II) whether the television station provides coverage or other local service to such community;

"(III) whether any other television station that is eligible to be carried by a cable system in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community; and

"(IV) evidence of viewing patterns in cable and noncable households within the areas served by the cable system or systems in such community.

"(iii) A cable operator shall not delete from carriage the signal of a commercial television station during the pendency of any proceeding pursuant to this subparagraph.

"(iv) In the rulemaking proceeding required by subsection (f), the Commission shall provide for expedited consideration of requests filed under this subparagraph.

"(2) **QUALIFIED LOW POWER STATION.**—The term 'qualified low power station' means any television broadcast station conforming to the rules established for Low Power Television Stations contained in part 74 of title 47, Code of Federal Regulations, only if—

"(A) such station broadcasts for at least the minimum number of hours of operation required by the Commission for television broadcast stations under part 73 of title 47, Code of Federal Regulations;

"(B) such station meets all obligations and requirements applicable to television broadcast stations under part 73 of title 47, Code of Federal Regulations, with respect to the broadcast of nonentertainment programming; programming and rates involving political candidates, election issues, controversial issues of public importance, editorials, and personal attacks; programming for children; and equal employment opportunity; and the Commission determines that the provision of such programming by such station would address local news and informational needs which are not being adequately served by full power television broadcast stations because of the geographic distance of such full power stations from the low power station's community of license;

"(C) such station complies with interference regulations consistent with its secondary status pursuant to part 74 of title 47, Code of Federal Regulations;

"(D) such station is located no more than 35 miles from the cable system's headend, and delivers to the principal headend of the cable system an over-the-air signal of good quality, as determined by the Commission;

"(E) the community of license of such station and the franchise area of the cable system are both located outside of the largest 160 Metropolitan Statistical Areas, ranked by population, as determined by the Office of Management and Budget on June 30, 1990, and the population of such community of license on such date did not exceed 35,000; and

"(F) there is no full power television broadcast station licensed to any community within the county or other political subdivision (of a State) served by the cable system.

Nothing in this paragraph shall be construed to change the secondary status of any low power station as provided in part 74 of title 47, Code of Federal Regulations, as in effect on the date of enactment of this section."

SEC. 5. CARRIAGE OF NONCOMMERCIAL STATIONS.

Part II of title VI of the Communications Act of 1934 (47 U.S.C. 531 et seq.) is further amended by inserting after section 614 (as added by section 4 of this Act) the following new section:

"SEC. 615. CARRIAGE OF NONCOMMERCIAL EDUCATIONAL TELEVISION.

"(a) CARRIAGE OBLIGATIONS.—In addition to the carriage requirements set forth in section 614, each cable operator of a cable system shall carry the signals of qualified noncommercial educational television stations in accordance with the provisions of this section.

"(b) REQUIREMENTS TO CARRY QUALIFIED STATIONS.—

"(1) GENERAL REQUIREMENT TO CARRY EACH QUALIFIED STATION.—Subject to paragraphs (2) and (3) and subsection (e), each cable operator shall carry, on the cable system of that cable operator, any qualified local noncommercial educational television station requesting carriage.

"(2)(A) SYSTEMS WITH 12 OR FEWER CHANNELS.—Notwithstanding paragraph (1), a cable operator of a cable system with 12 or fewer usable activated channels shall be required to carry the signal of one qualified local noncommercial educational television station; except that a cable operator of such a system shall comply with subsection (c) and may, in its discretion, carry the signals of other qualified noncommercial educational television stations.

"(B) In the case of a cable system described in subparagraph (A) which operates beyond the presence of any qualified local noncommercial educational television station—

"(i) the cable operator shall import and carry on that system the signal of one qualified noncommercial educational television station;

"(ii) the selection for carriage of such a signal shall be at the election of the cable operator; and

"(iii) in order to satisfy the requirements for carriage specified in this subsection, the cable operator of the system shall not be required to remove any other programming service actually provided to subscribers on March 29, 1990; except that such cable operator shall use the first channel available to satisfy the requirements of this subparagraph.

"(3) SYSTEMS WITH 13 TO 36 CHANNELS.—(A) Subject to subsection (c), a cable operator of a cable system with 13 to 36 usable activated channels—

"(i) shall carry the signal of at least one qualified local noncommercial educational television station but shall not be required to carry the signals of more than three such stations, and

"(ii) may, in its discretion, carry additional such stations.

"(B) In the case of a cable system described in this paragraph which operates beyond the presence of any qualified local noncommercial educational television station, the cable operator shall import and carry on that system the signal of at least one qualified noncommercial educational television station to comply with subparagraph (A)(i).

"(C) The cable operator of a cable system described in this paragraph which carries the signal of a qualified local noncommercial educational station affiliated with a State public television network shall not be required to carry the signal of any additional qualified local noncommercial educational television

stations affiliated with the same network if the programming of such additional stations is substantially duplicated by the programming of the qualified local noncommercial educational television station receiving carriage.

"(D) A cable operator of a system described in this paragraph which increases the usable activated channel capacity of the system to more than 36 channels on or after March 29, 1990, shall, in accordance with the other provisions of this section, carry the signal of each qualified local noncommercial educational television station requesting carriage, subject to subsection (e).

"(c) CONTINUED CARRIAGE OF EXISTING STATIONS.—Notwithstanding any other provision of this section, all cable operators shall continue to provide carriage to all qualified local noncommercial educational television stations whose signals were carried on their systems as of March 29, 1990. The requirements of this subsection may be waived with respect to a particular cable operator and a particular such station, upon the written consent of the cable operator and the station.

"(d) PLACEMENT OF ADDITIONAL SIGNALS.—A cable operator required to add the signals of qualified local noncommercial educational television stations to a cable system under this section may do so, subject to approval by the franchising authority pursuant to section 611, by placing such additional stations on public, educational, or governmental channels not in use for their designated purposes.

"(e) SYSTEMS WITH MORE THAN 36 CHANNELS.—A cable operator of a cable system with a capacity of more than 36 usable activated channels which is required to carry the signals of three qualified local noncommercial educational television stations shall not be required to carry the signals of additional such stations the programming of which substantially duplicates the programming broadcast by another qualified local noncommercial educational television station requesting carriage. Substantial duplication shall be defined by the Commission in a manner that promotes access to distinctive noncommercial educational television services.

"(f) WAIVER OF NONDUPLICATION RIGHTS.—A qualified local noncommercial educational television station whose signal is carried by a cable operator shall not assert any network nonduplication rights it may have pursuant to section 76.92 of title 47, Code of Federal Regulations, to require the deletion of programs aired on other qualified local noncommercial educational television stations whose signals are carried by that cable operator.

"(g) CONDITIONS OF CARRIAGE.—

"(1) CONTENT TO BE CARRIED.—A cable operator shall retransmit in its entirety the primary video, accompanying audio, and line 21 closed caption transmission of each qualified local noncommercial educational television station whose signal is carried on the cable system, and, to the extent technically feasible, program-related material carried in the vertical blanking interval, or on subcarriers, that may be necessary for receipt of programming by handicapped persons or for educational or language purposes. Retransmission of other material in the vertical

blanking interval or on subcarriers shall be within the discretion of the cable operator.

"(2) **BANDWIDTH AND TECHNICAL QUALITY.**—A cable operator shall provide each qualified local noncommercial educational television station whose signal is carried in accordance with this section with bandwidth and technical capacity equivalent to that provided to commercial television broadcast stations carried on the cable system and shall carry the signal of each qualified local noncommercial educational television station without material degradation.

"(3) **CHANGES IN CARRIAGE.**—The signal of a qualified local noncommercial educational television station shall not be repositioned by a cable operator unless the cable operator, at least 30 days in advance of such repositioning, has provided written notice to the station and all subscribers of the cable system. For purposes of this paragraph, repositioning includes (A) assignment of a qualified local noncommercial educational television station to a cable system channel number different from the cable system channel number to which the station was assigned as of March 29, 1990, and (B) deletion of the station from the cable system. The notification provisions of this paragraph shall not be used to undermine or evade the channel positioning or carriage requirements imposed upon cable operators under this section.

"(4) **GOOD QUALITY SIGNAL REQUIRED.**—Notwithstanding the other provisions of this section, a cable operator shall not be required to carry the signal of any qualified local noncommercial educational television station which does not deliver to the cable system's principal headend a signal of good quality or a baseband video signal, as may be defined by the Commission.

"(5) **CHANNEL POSITIONING.**—Each signal carried in fulfillment of the carriage obligations of a cable operator under this section shall be carried on the cable system channel number on which the qualified local noncommercial educational television station is broadcast over the air, or on the channel on which it was carried on July 19, 1985, at the election of the station, or on such other channel number as is mutually agreed upon by the station and the cable operator. Any dispute regarding the positioning of a qualified local noncommercial educational television station shall be resolved by the Commission.

"(h) **AVAILABILITY OF SIGNALS.**—Signals carried in fulfillment of the carriage obligations of a cable operator under this section shall be available to every subscriber as part of the cable system's lowest priced service tier that includes the retransmission of local commercial television broadcast signals.

"(i) **PAYMENT FOR CARRIAGE PROHIBITED.**—

"(1) **IN GENERAL.**—A cable operator shall not accept monetary payment or other valuable consideration in exchange for carriage of the signal of any qualified local noncommercial educational television station carried in fulfillment of the requirements of this section, except that such a station may be required to bear the cost associated with delivering a good quality signal or a baseband video signal to the principal headend of the cable system.

"(2) **DISTANT SIGNAL EXCEPTION.**—Notwithstanding the provisions of this section, a cable operator shall not be required to add the signal of a qualified local noncommercial educational television station not already carried under the provision of subsection (c), where such signal would be considered a distant signal for copyright purposes unless such station indemnifies the cable operator for any increased copyright costs resulting from carriage of such signal.

"(j) **REMEDIES.**—

"(1) **COMPLAINT.**—Whenever a qualified local noncommercial educational television station believes that a cable operator of a cable system has failed to comply with the signal carriage requirements of this section, the station may file a complaint with the Commission. Such complaint shall allege the manner in which such cable operator has failed to comply with such requirements and state the basis for such allegations.

"(2) **OPPORTUNITY TO RESPOND.**—The Commission shall afford such cable operator an opportunity to present data, views, and arguments to establish that the cable operator has complied with the signal carriage requirements of this section.

"(3) **REMEDIAL ACTIONS; DISMISSAL.**—Within 120 days after the date a complaint is filed under this subsection, the Commission shall determine whether the cable operator has complied with the requirements of this section. If the Commission determines that the cable operator has failed to comply with such requirements, the Commission shall state with particularity the basis for such findings and order the cable operator to take such remedial action as is necessary to meet such requirements. If the Commission determines that the cable operator has fully complied with such requirements, the Commission shall dismiss the complaint.

"(k) **IDENTIFICATION OF SIGNALS.**—A cable operator shall identify, upon request by any person, those signals carried in fulfillment of the requirements of this section.

"(l) **DEFINITIONS.**—For purposes of this section—

"(1) **QUALIFIED NONCOMMERCIAL EDUCATIONAL TELEVISION STATION.**—The term 'qualified noncommercial educational television station' means any television broadcast station which—

"(A)(i) under the rules and regulations of the Commission in effect on March 29, 1990, is licensed by the Commission as a noncommercial educational television broadcast station and which is owned and operated by a public agency, nonprofit foundation, corporation, or association; and

"(ii) has as its licensee an entity which is eligible to receive a community service grant, or any successor grant thereto, from the Corporation for Public Broadcasting, or any successor organization thereto, on the basis of the formula set forth in section 396(k)(6)(B); or

"(B) is owned and operated by a municipality and transmits predominantly noncommercial programs for educational purposes.

Such term includes (I) the translator of any noncommercial educational television station with five watts or higher power

serving the franchise area, (II) a full-service station or translator if such station or translator is licensed to a channel reserved for noncommercial educational use pursuant to section 73.606 of title 47, Code of Federal Regulations, or any successor regulations thereto, and (III) such stations and translators operating on channels not so reserved as the Commission determines are qualified as noncommercial educational stations.

"(2) **QUALIFIED LOCAL NONCOMMERCIAL EDUCATIONAL TELEVISION STATION.**—The term 'qualified local noncommercial educational television station' means a qualified noncommercial educational television station—

"(A) which is located to a principal community whose reference point, as defined in section 76.53 of title 47, Code of Federal Regulations (as in effect on March 29, 1990), or any successor regulations thereto, is within 50 miles of the principal headend of the cable system; or

"(B) whose Grade B service contour, as defined in section 73.683(a) of such title (as in effect on March 29, 1990), or any successor regulations thereto, encompasses the principal headend of the cable system."

SEC. 6. RETRANSMISSION CONSENT FOR CABLE SYSTEMS.

(A) **AMENDMENT.**—Section 325 of the Communications Act of 1934 (47 U.S.C. 325) is amended—

(1) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively; and

(2) by inserting immediately after subsection (a) the following new subsection:

"(b)(1) Following the date that is one year after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, no cable system or other multichannel video programming distributor shall retransmit the signal of a broadcasting station, or any part thereof, except—

"(A) with the express authority of the originating station; or

"(B) pursuant to section 614, in the case of a station electing, in accordance with this subsection, to assert the right to carriage under such section.

"(2) The provisions of this subsection shall not apply to—

"(A) retransmission of the signal of a noncommercial broadcasting station;

"(B) retransmission directly to a home satellite antenna of the signal of a broadcasting station that is not owned or operated by, or affiliated with, a broadcasting network, if such signal was retransmitted by a satellite carrier on May 1, 1991;

"(C) retransmission of the signal of a broadcasting station that is owned or operated by, or affiliated with, a broadcasting network directly to a home satellite antenna, if the household receiving the signal is an unserved household; or

"(D) retransmission by a cable operator or other multichannel video programming distributor of the signal of a superstation if such signal was obtained from a satellite carrier and the originating station was a superstation on May 1, 1991.

For purposes of this paragraph, the terms 'satellite carrier', 'superstation', and 'unserved household' have the meanings given those terms, respectively, in section 119(d) of title 17, United States Code, as in effect on the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992.

"(3)(A) Within 45 days after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, the Commission shall commence a rulemaking proceeding to establish regulations to govern the exercise by television broadcast stations of the right to grant retransmission consent under this subsection and of the right to signal carriage under section 614, and such other regulations as are necessary to administer the limitations contained in paragraph (2). The Commission shall consider in such proceeding the impact that the grant of retransmission consent by television stations may have on the rates for the basic service tier and shall ensure that the regulations prescribed under this subsection do not conflict with the Commission's obligation under section 623(b)(1) to ensure that the rates for the basic service tier are reasonable. Such rulemaking proceeding shall be completed within 180 days after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992.

"(B) The regulations required by subparagraph (A) shall require that television stations, within one year after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992 and every three years thereafter, make an election between the right to grant retransmission consent under this subsection and the right to signal carriage under section 614. If there is more than one cable system which services the same geographic area, a station's election shall apply to all such cable systems.

"(4) If an originating television station elects under paragraph (3)(B) to exercise its right to grant retransmission consent under this subsection with respect to a cable system, the provisions of section 614 shall not apply to the carriage of the signal of such station by such cable system.

"(5) The exercise by a television broadcast station of the right to grant retransmission consent under this subsection shall not interfere with or supersede the rights under section 614 or 615 of any station electing to assert the right to signal carriage under that section.

"(6) Nothing in this section shall be construed as modifying the compulsory copyright license established in section 111 of title 17, United States Code, or as affecting existing or future video programming licensing agreements between broadcasting stations and video programmers."

SEC. 7. AWARD OF FRANCHISES; PROMOTION OF COMPETITION.

(a) ADDITIONAL COMPETITIVE FRANCHISES.—

(1) AMENDMENT.—Section 621(a)(1) of the Communications Act of 1934 (47 U.S.C. 541(a)(1)) is amended by inserting before the period at the end the following: "except that a franchising authority may not grant an exclusive franchise and may not unreasonably refuse to award an additional competitive franchise. Any applicant whose application for a second franchise has been denied by a final decision of the franchising authority

may appeal such final decision pursuant to the provisions of section 635 for failure to comply with this subsection”.

(2) **CONFORMING AMENDMENT.**—Section 635(a) of the Communications Act of 1934 (47 U.S.C. 555(a)) is amended by inserting “621(a)(1),” after “section”.

(b) **FRANCHISE REQUIREMENTS.**—Section 621(a) of the Communications Act of 1934 (47 U.S.C. 541(a)) is amended by adding at the end the following new paragraph:

“(4) In awarding a franchise, the franchising authority—

“(A) shall allow the applicant’s cable system a reasonable period of time to become capable of providing cable service to all households in the franchise area;

“(B) may require adequate assurance that the cable operator will provide adequate public, educational, and governmental access channel capacity, facilities, or financial support; and

“(C) may require adequate assurance that the cable operator has the financial, technical, or legal qualifications to provide cable service.”.

(c) **MUNICIPAL AUTHORITIES PERMITTED TO OPERATE SYSTEMS.**—Section 621 of the Communications Act of 1934 (47 U.S.C. 541) is amended—

(1) by inserting “and subsection (f)” before the comma in subsection (b)(1); and

(2) by adding at the end the following new subsection:

“(f) No provision of this Act shall be construed to—

“(1) prohibit a local or municipal authority that is also, or is affiliated with, a franchising authority from operating as a multichannel video programming distributor in the franchise area, notwithstanding the granting of one or more franchises by such franchising authority; or

“(2) require such local or municipal authority to secure a franchise to operate as a multichannel video programming distributor.”.

SEC. 8. CONSUMER PROTECTION AND CUSTOMER SERVICE.

Section 632 of the Communications Act of 1934 (47 U.S.C. 552) is amended to read as follows:

“SEC. 632. CONSUMER PROTECTION AND CUSTOMER SERVICE.

“(a) **FRANCHISING AUTHORITY ENFORCEMENT.**—A franchising authority may establish and enforce—

“(1) customer service requirements of the cable operator; and

“(2) construction schedules and other construction-related requirements, including construction-related performance requirements, of the cable operator.

“(b) **COMMISSION STANDARDS.**—The Commission shall, within 180 days of enactment of the Cable Television Consumer Protection and Competition Act of 1992, establish standards by which cable operators may fulfill their customer service requirements. Such standards shall include, at a minimum, requirements governing—

“(1) cable system office hours and telephone availability;

“(2) installations, outages, and service calls; and

“(3) communications between the cable operator and the subscriber (including standards governing bills and refunds).

"(c) CONSUMER PROTECTION LAWS AND CUSTOMER SERVICE AGREEMENTS.—

"(1) CONSUMER PROTECTION LAWS.—Nothing in this title shall be construed to prohibit any State or any franchising authority from enacting or enforcing any consumer protection law, to the extent not specifically preempted by this title.

"(2) CUSTOMER SERVICE REQUIREMENT AGREEMENTS.—Nothing in this section shall be construed to preclude a franchising authority and a cable operator from agreeing to customer service requirements that exceed the standards established by the Commission under subsection (b). Nothing in this title shall be construed to prevent the establishment or enforcement of any municipal law or regulation, or any State law, concerning customer service that imposes customer service requirements that exceed the standards set by the Commission under this section, or that addresses matters not addressed by the standards set by the Commission under this section."

SEC. 9. LEASED COMMERCIAL ACCESS.

(a) PURPOSE.—Section 612(a) of the Communications Act of 1934 (47 U.S.C. 532(a)) is amended by inserting "to promote competition in the delivery of diverse sources of video programming and" after "purpose of this section is".

(b) COMMISSION RULES ON MAXIMUM REASONABLE RATES AND OTHER TERMS AND CONDITIONS.—Section 612(c) of such Act (47 U.S.C. 532(c)) is amended—

(1) in paragraph (1) by inserting "and with rules prescribed by the Commission under paragraph (4)" after "purpose of this section"; and

(2) by adding at the end the following new paragraph:

"(4)(A) The Commission shall have the authority to—

"(i) determine the maximum reasonable rates that a cable operator may establish pursuant to paragraph (1) for commercial use of designated channel capacity, including the rate charged for the billing of rates to subscribers and for the collection of revenue from subscribers by the cable operator for such use;

"(ii) establish reasonable terms and conditions for such use, including those for billing and collection; and

"(iii) establish procedures for the expedited resolution of disputes concerning rates or carriage under this section.

"(B) Within 180 days after the date of enactment of this paragraph, the Commission shall establish rules for determining maximum reasonable rates under subparagraph (A)(i), for establishing terms and conditions under subparagraph (A)(ii), and for providing procedures under subparagraph (A)(iii)."

(c) ACCESS FOR QUALITY MINORITY PROGRAMMING SOURCES AND QUALIFIED EDUCATIONAL PROGRAMMING SOURCES.—Section 612 of such Act (47 U.S.C. 532) is amended by adding at the end thereof the following new subsection:

"(i)(1) Notwithstanding the provisions of subsections (b) and (c), a cable operator required by this section to designate channel capacity for commercial use may use any such channel capacity for the provision of programming from a qualified minority programming

source or from any qualified educational programming source, whether or not such source is affiliated with the cable operator. The channel capacity used to provide programming from a qualified minority programming source or from any qualified educational programming source pursuant to this subsection may not exceed 33 percent of the channel capacity designated pursuant to this section. No programming provided over a cable system on July 1, 1990, may qualify as minority programming or educational programming on that cable system under this subsection.

"(2) For purposes of this subsection, the term 'qualified minority programming source' means a programming source which devotes substantially all of its programming to coverage of minority viewpoints, or to programming directed at members of minority groups, and which is over 50 percent minority-owned, as the term 'minority' is defined in section 309(i)(3)(C)(ii).

"(3) For purposes of this subsection, the term 'qualified educational programming source' means a programming source which devotes substantially all of its programming to educational or instructional programming that promotes public understanding of mathematics, the sciences, the humanities, and the arts and has a documented annual expenditure on programming exceeding \$15,000,000. The annual expenditure on programming means all annual costs incurred by the programming source to produce or acquire programs which are scheduled to be televised, and specifically excludes marketing, promotion, satellite transmission and operational costs, and general administrative costs.

"(4) Nothing in this subsection shall substitute for the requirements to carry qualified noncommercial educational television stations as specified under section 615."

(d) CONFORMING AMENDMENT.—Paragraph (5) of section 612(b) of the Communications Act of 1934 (47 U.S.C. 532(b)) is amended to read as follows:

"(5) For the purposes of this section, the term 'commercial use' means the provision of video programming, whether or not for profit."

SEC. 10. CHILDREN'S PROTECTION FROM INDECENT PROGRAMMING ON LEASED ACCESS CHANNELS.

(a) AUTHORITY TO ENFORCE.—Section 612(h) of the Communications Act of 1934 (47 U.S.C. 532(h)) is amended—

(1) by inserting "or the cable operator" after "franchising authority"; and

(2) by adding at the end thereof the following: "This subsection shall permit a cable operator to enforce prospectively a written and published policy of prohibiting programming that the cable operator reasonably believes describes or depicts sexual or excretory activities or organs in a patently offensive manner as measured by contemporary community standards."

(b) COMMISSION REGULATIONS.—Section 612 of the Communications Act of 1934 (47 U.S.C. 532) is amended by inserting after subsection (i) (as added by section 9(c) of this Act) the following new subsection:

"(j)(1) Within 120 days following the date of the enactment of this subsection, the Commission shall promulgate regulations de-

signed to limit the access of children to indecent programming, as defined by Commission regulations, and which cable operators have not voluntarily prohibited under subsection (h) by—

“(A) requiring cable operators to place on a single channel all indecent programs, as identified by program providers, intended for carriage on channels designated for commercial use under this section;

“(B) requiring cable operators to block such single channel unless the subscriber requests access to such channel in writing; and

“(C) requiring programmers to inform cable operators if the program would be indecent as defined by Commission regulations.

“(2) Cable operators shall comply with the regulations promulgated pursuant to paragraph (1).”

(c) **PROHIBITS SYSTEM USE.**—Within 180 days following the date of the enactment of this Act, the Federal Communications Commission shall promulgate such regulations as may be necessary to enable a cable operator of a cable system to prohibit the use, on such system, of any channel capacity of any public, educational, or governmental access facility for any programming which contains obscene material, sexually explicit conduct, or material soliciting or promoting unlawful conduct.

(d) **CONFORMING AMENDMENT.**—Section 638 of the Communications Act of 1934 (47 U.S.C. 558) is amended by striking the period at the end and inserting the following: “unless the program involves obscene material.”

SEC. 11. LIMITATIONS ON OWNERSHIP, CONTROL, AND UTILIZATION.

(a) **CROSS-OWNERSHIP.**—Section 619(a) of the Communications Act of 1934 (47 U.S.C. 533(a)) is amended—

(1) by inserting “(1)” immediately after “(a)”; and

(2) by adding at the end the following new paragraph:

“(2) It shall be unlawful for a cable operator to hold a license for multichannel multipoint distribution service, or to offer satellite master antenna television service separate and apart from any franchised cable service, in any portion of the franchise area served by that cable operator’s cable system. The Commission—

“(A) shall waive the requirements of this paragraph for all existing multichannel multipoint distribution services and satellite master antenna television services which are owned by a cable operator on the date of enactment of this paragraph; and

“(B) may waive the requirements of this paragraph to the extent the Commission determines is necessary to ensure that all significant portions of a franchise area are able to obtain video programming.”

(b) **CLARIFICATION OF LOCAL AUTHORITY TO REGULATE OWNERSHIP.**—Section 619(d) of the Communications Act of 1934 (47 U.S.C. 533(d)) is amended—

(1) by striking “any media” and inserting “any other media”; and

(2) by adding at the end thereof the following: “Nothing in this section shall be construed to prevent any State or franchising authority from prohibiting the ownership or control of a

cable system in a jurisdiction by any person (1) because of such person's ownership or control of any other cable system in such jurisdiction; or (2) in circumstances in which the State or franchising authority determines that the acquisition of such a cable system may eliminate or reduce competition in the delivery of cable service in such jurisdiction."

(c) COMMISSION REGULATIONS.—Section 613 of the Communications Act of 1934 (47 U.S.C. 533) is amended—

(1) by redesignating subsections (f) and (g) as subsections (g) and (h), respectively; and

(2) by inserting after subsection (e) the following new subsection:

"(f)(1) In order to enhance effective competition, the Commission shall, within one year after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, conduct a proceeding—

"(A) to prescribe rules and regulations establishing reasonable limits on the number of cable subscribers a person is authorized to reach through cable systems owned by such person, or in which such person has an attributable interest;

"(B) to prescribe rules and regulations establishing reasonable limits on the number of channels on a cable system that can be occupied by a video programmer in which a cable operator has an attributable interest; and

"(C) to consider the necessity and appropriateness of imposing limitations on the degree to which multichannel video programming distributors may engage in the creation or production of video programming.

"(2) In prescribing rules and regulations under paragraph (1), the Commission shall, among other public interest objectives—

"(A) ensure that no cable operator or group of cable operators can unfairly impede, either because of the size of any individual operator or because of joint actions by a group of operators of sufficient size, the flow of video programming from the video programmer to the consumer;

"(B) ensure that cable operators affiliated with video programmers do not favor such programmers in determining carriage on their cable systems or do not unreasonably restrict the flow of the video programming of such programmers to other video distributors;

"(C) take particular account of the market structure, ownership patterns, and other relationships of the cable television industry, including the nature and market power of the local franchise, the joint ownership of cable systems and video programmers, and the various types of non-equity controlling interests;

"(D) account for any efficiencies and other benefits that might be gained through increased ownership or control;

"(E) make such rules and regulations reflect the dynamic nature of the communications marketplace;

"(F) not impose limitations which would bar cable operators from serving previously unserved rural areas; and

"(G) not impose limitations which would impair the development of diverse and high quality video programming."

SEC. 12. REGULATION OF CARRIAGE AGREEMENTS.

Part II of title VI of the Communications Act of 1934 is amended by inserting after section 615 (as added by section 5 of this Act) the following new section:

"SEC. 616. REGULATION OF CARRIAGE AGREEMENTS.

"(a) **REGULATIONS.**—Within one year after the date of enactment of this section, the Commission shall establish regulations governing program carriage agreements and related practices between cable operators or other multichannel video programming distributors and video programming vendors. Such regulations shall—

"(1) include provisions designed to prevent a cable operator or other multichannel video programming distributor from requiring a financial interest in a program service as a condition for carriage on one or more of such operator's systems;

"(2) include provisions designed to prohibit a cable operator or other multichannel video programming distributor from coercing a video programming vendor to provide, and from retaliating against such a vendor for failing to provide, exclusive rights against other multichannel video programming distributors as a condition of carriage on a system;

"(3) contain provisions designed to prevent a multichannel video programming distributor from engaging in conduct the effect of which is to unreasonably restrain the ability of an unaffiliated video programming vendor to compete fairly by discriminating in video programming distribution on the basis of affiliation or nonaffiliation of vendors in the selection, terms, or conditions for carriage of video programming provided by such vendors;

"(4) provide for expedited review of any complaints made by a video programming vendor pursuant to this section;

"(5) provide for appropriate penalties and remedies for violations of this subsection, including carriage; and

"(6) provide penalties to be assessed against any person filing a frivolous complaint pursuant to this section.

"(b) **DEFINITION.**—As used in this section, the term 'video programming vendor' means a person engaged in the production, creation, or wholesale distribution of video programming for sale."

SEC. 13. SALES OF CABLE SYSTEMS.

Part II of title VI of the Communications Act of 1934 is further amended by adding at the end thereof the following new section:

"SEC. 617. SALES OF CABLE SYSTEMS.

"(a) **3-YEAR HOLDING PERIOD REQUIRED.**—Except as provided in this section, no cable operator may sell or otherwise transfer ownership in a cable system within a 36-month period following either the acquisition or initial construction of such system by such operator.

"(b) **TREATMENT OF MULTIPLE TRANSFERS.**—In the case of a sale of multiple systems, if the terms of the sale require the buyer to subsequently transfer ownership of one or more such systems to one or more third parties, such transfers shall be considered a part of the initial transaction.

"(c) **EXCEPTIONS.**—Subsection (a) shall not apply to—

"(1) any transfer of ownership interest in any cable system which is not subject to Federal income tax liability;

"(2) any sale required by operation of any law or any act of any Federal agency, any State or political subdivision thereof, or any franchising authority; or

"(3) any sale, assignment, or transfer, to one or more purchasers, assignees, or transferees controlled by, controlling, or under common control with, the seller, assignor, or transferor.

"(d) **WAIVER AUTHORITY.**—The Commission may, consistent with the public interest, waive the requirement of subsection (a), except that, if the franchise requires franchise authority approval of a transfer, the Commission shall not waive such requirements unless the franchise authority has approved the transfer. The Commission shall use its authority under this subsection to permit appropriate transfers in the cases of default, foreclosure, or other financial distress.

"(e) **LIMITATION ON DURATION OF FRANCHISING AUTHORITY POWER TO DISAPPROVE TRANSFERS.**—In the case of any sale or transfer of ownership of any cable system after the 36-month period following acquisition of such system, a franchising authority shall, if the franchise requires franchising authority approval of a sale or transfer, have 120 days to act upon any request for approval of such sale or transfer that contains or is accompanied by such information as is required in accordance with Commission regulations and by the franchising authority. If the franchising authority fails to render a final decision on the request within 120 days, such request shall be deemed granted unless the requesting party and the franchising authority agree to an extension of time."

SEC. 14. SUBSCRIBER BILL ITEMIZATION.

Section 622(c) of the Communications Act of 1934 (47 U.S.C. 542(c)) is amended to read as follows:

"(c) Each cable operator may identify, consistent with the regulations prescribed by the Commission pursuant to section 623, as a separate line item on each regular bill of each subscriber, each of the following:

"(1) The amount of the total bill assessed as a franchise fee and the identity of the franchising authority to which the fee is paid.

"(2) The amount of the total bill assessed to satisfy any requirements imposed on the cable operator by the franchise agreement to support public, educational, or governmental channels or the use of such channels.

"(3) The amount of any other fee, tax, assessment, or charge of any kind imposed by any governmental authority on the transaction between the operator and the subscriber."

SEC. 15. NOTICE TO CABLE SUBSCRIBERS ON UNSOLICITED SEXUALLY EXPLICIT PROGRAMS.

Section 624(d) of the Communications Act of 1934 (47 U.S.C. 544(d)) is amended by adding at the end the following new paragraph:

"(3)(A) If a cable operator provides a premium channel without charge to cable subscribers who do not subscribe to such premium

channel, the cable operator shall, not later than 30 days before such premium channel is provided without charge—

“(i) notify all cable subscribers that the cable operator plans to provide a premium channel without charge;

“(ii) notify all cable subscribers when the cable operator plans to offer a premium channel without charge;

“(iii) notify all cable subscribers that they have a right to request that the channel carrying the premium channel be blocked; and

“(iv) block the channel carrying the premium channel upon the request of a subscriber.

“(B) For the purpose of this section, the term ‘premium channel’ shall mean any pay service offered on a per channel or per program basis, which offers movies rated by the Motion Picture Association of America as X, NC-17, or R.”.

SEC. 16. TECHNICAL STANDARDS; EMERGENCY ANNOUNCEMENTS; PROGRAMMING CHANGES; HOME WIRING.

(a) **TECHNICAL STANDARDS.**—Section 624(e) of the Communications Act of 1934 (47 U.S.C. 544(e)) is amended to read as follows:

“(e) Within one year after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, the Commission shall prescribe regulations which establish minimum technical standards relating to cable systems’ technical operation and signal quality. The Commission shall update such standards periodically to reflect improvements in technology. A franchising authority may require as part of a franchise (including a modification, renewal, or transfer thereof) provisions for the enforcement of the standards prescribed under this subsection. A franchising authority may apply to the Commission for a waiver to impose standards that are more stringent than the standards prescribed by the Commission under this subsection.”.

(b) **EMERGENCY ANNOUNCEMENTS.**—Section 624 of such Act (47 U.S.C. 544) is amended by adding at the end the following new subsection:

“(g) Notwithstanding any such rule, regulation, or order, each cable operator shall comply with such standards as the Commission shall prescribe to ensure that viewers of video programming on cable systems are afforded the same emergency information as is afforded by the emergency broadcasting system pursuant to Commission regulations in subpart G of part 73, title 47, Code of Federal Regulations.”.

(c) **PROGRAMMING CHANGES.**—Section 624 of such Act (47 U.S.C. 544) is further amended—

(1) in subsection (b)(1), by inserting “, except as provided in subsection (h),” after “but may not”; and

(2) by adding at the end the following new subsection:

“(h) A franchising authority may require a cable operator to do any one or more of the following:

“(1) Provide 30 days’ advance written notice of any change in channel assignment or in the video programming service provided over any such channel.

"(2) Inform subscribers, via written notice, that comments on programming and channel position changes are being recorded by a designated office of the franchising authority."

(d) HOME WIRING.—Section 624 of such Act (47 U.S.C. 544) is further amended by adding at the end the following new subsection:

"(i) Within 120 days after the date of enactment of this subsection, the Commission shall prescribe rules concerning the disposition, after a subscriber to a cable system terminates service, of any cable installed by the cable operator within the premises of such subscriber."

SEC. 17. CONSUMER ELECTRONICS EQUIPMENT COMPATIBILITY.

The Communications Act of 1934 is amended by adding after section 624 (47 U.S.C. 544) the following new section:

"SEC. 624A. CONSUMER ELECTRONICS EQUIPMENT COMPATIBILITY.

"(a) FINDINGS.—The Congress finds that—

"(1) new and recent models of television receivers and video cassette recorders often contain premium features and functions that are disabled or inhibited because of cable scrambling, encoding, or encryption technologies and devices, including converter boxes and remote control devices required by cable operators to receive programming;

"(2) if these problems are allowed to persist, consumers will be less likely to purchase, and electronics equipment manufacturers will be less likely to develop, manufacture, or offer for sale, television receivers and video cassette recorders with new and innovative features and functions; and

"(3) cable operators should use technologies that will prevent signal thefts while permitting consumers to benefit from such features and functions in such receivers and recorders.

"(b) COMPATIBLE INTERFACES.—

"(1) REPORT; REGULATIONS.—Within 1 year after the date of enactment of this section, the Commission, in consultation with representatives of the cable industry and the consumer electronics industry, shall report to Congress on means of assuring compatibility between televisions and video cassette recorders and cable systems, consistent with the need to prevent theft of cable service, so that cable subscribers will be able to enjoy the full benefit of both the programming available on cable systems and the functions available on their televisions and video cassette recorders. Within 180 days after the date of submission of the report required by this subsection, the Commission shall issue such regulations as are necessary to assure such compatibility.

"(2) SCRAMBLING AND ENCRYPTION.—In issuing the regulations referred to in paragraph (1), the Commission shall determine whether and, if so, under what circumstances to permit cable systems to scramble or encrypt signals or to restrict cable systems in the manner in which they encrypt or scramble signals, except that the Commission shall not limit the use of scrambling or encryption technology where the use of such technology does not interfere with the functions of subscribers' television receivers or video cassette recorders.

"(c) RULEMAKING REQUIREMENTS.—

"(1) FACTORS TO BE CONSIDERED.—In prescribing the regulations required by this section, the Commission shall consider—

"(A) the costs and benefits to consumers of imposing compatibility requirements on cable operators and television manufacturers in a manner that, while providing effective protection against theft or unauthorized reception of cable service, will minimize interference with or nullification of the special functions of subscribers' television receivers or video cassette recorders, including functions that permit the subscriber—

"(i) to watch a program on one channel while simultaneously using a video cassette recorder to tape a program on another channel;

"(ii) to use a video cassette recorder to tape two consecutive programs that appear on different channels; and

"(iii) to use advanced television picture generation and display features; and

"(B) the need for cable operators to protect the integrity of the signals transmitted by the cable operator against theft or to protect such signals against unauthorized reception.

"(2) REGULATIONS REQUIRED.—The regulations prescribed by the Commission under this section shall include such regulations as are necessary—

"(A) to specify the technical requirements with which a television receiver or video cassette recorder must comply in order to be sold as 'cable compatible' or 'cable ready';

"(B) to require cable operators offering channels whose reception requires a converter box—

"(i) to notify subscribers that they may be unable to benefit from the special functions of their television receivers and video cassette recorders, including functions that permit subscribers—

"(I) to watch a program on one channel while simultaneously using a video cassette recorder to tape a program on another channel;

"(II) to use a video cassette recorder to tape two consecutive programs that appear on different channels; and

"(III) to use advanced television picture generation and display features; and

"(ii) to the extent technically and economically feasible, to offer subscribers the option of having all other channels delivered directly to the subscribers' television receivers or video cassette recorders without passing through the converter box;

"(C) to promote the commercial availability, from cable operators and retail vendors that are not affiliated with cable systems, of converter boxes and of remote control devices compatible with converter boxes;

"(D) to require a cable operator who offers subscribers the option of renting a remote control unit—

"(i) to notify subscribers that they may purchase a commercially available remote control device from any source that sells such devices rather than renting it from the cable operator; and

"(ii) to specify the types of remote control units that are compatible with the converter box supplied by the cable operator; and

"(E) to prohibit a cable operator from taking any action that prevents or in any way disables the converter box supplied by the cable operator from operating compatibly with commercially available remote control units.

"(d) **REVIEW OF REGULATIONS.**—The Commission shall periodically review and, if necessary, modify the regulations issued pursuant to this section in light of any actions taken in response to such regulations and to reflect improvements and changes in cable systems, television receivers, video cassette recorders, and similar technology."

SEC. 18. FRANCHISE RENEWAL.

(a) **COMMENCEMENT OF PROCEEDINGS.**—Section 626(a) of the Communications Act of 1934 (47 U.S.C. 546(a)) is amended to read as follows:

"SEC. 626. (a)(1) A franchising authority may, on its own initiative during the 6-month period which begins with the 36th month before the franchise expiration, commence a proceeding which affords the public in the franchise area appropriate notice and participation for the purpose of (A) identifying the future cable-related community needs and interests, and (B) reviewing the performance of the cable operator under the franchise during the then current franchise term. If the cable operator submits, during such 6-month period, a written renewal notice requesting the commencement of such a proceeding, the franchising authority shall commence such a proceeding not later than 6 months after the date such notice is submitted.

"(2) The cable operator may not invoke the renewal procedures set forth in subsections (b) through (g) unless—

"(A) such a proceeding is requested by the cable operator by timely submission of such notice; or

"(B) such a proceeding is commenced by the franchising authority on its own initiative."

(b) **PROCEEDING ON RENEWAL PROPOSAL.**—Section 626(c)(1) of the Communications Act of 1934 (47 U.S.C. 546(c)(1)) is amended—

(1) by inserting "pursuant to subsection (b)" after "renewal of a franchise"; and

(2) by striking "completion of any proceedings under subsection (a)" and inserting the following: "date of the submission of the cable operator's proposal pursuant to subsection (b)".

(c) **REVIEW CRITERIA.**—Section 626(c)(1)(B) of the Communications Act of 1934 (47 U.S.C. 546(c)(1)(B)) is amended by striking "mix, quality, or level" and inserting "mix or quality".

(d) **CORRECTION OF FAILURES.**—Section 626(d) of the Communications Act of 1934 (47 U.S.C. 546(d)) is amended—

(1) by inserting "that has been submitted in compliance with subsection (b)" after "Any denial of a proposal for renewal"; and

(2) by striking "or has effectively acquiesced" and inserting "or the cable operator gives written notice of a failure or inability to cure and the franchising authority fails to object within a reasonable time after receipt of such notice".

(e) **HARMLESS ERROR.**—Section 626(e)(2)(A) of the Communications Act of 1934 (47 U.S.C. 546(e)(2)(A)) is amended by inserting after "franchising authority" the following: "other than harmless error,"

(f) **CONFLICT BETWEEN REVOCATION AND RENEWAL PROCEEDINGS.**—Section 626 of the Communications Act of 1934 (47 U.S.C. 546) is amended by adding at the end the following new subsection:

"(i) Notwithstanding the provisions of subsections (a) through (h), any lawful action to revoke a cable operator's franchise for cause shall not be negated by the subsequent initiation of renewal proceedings by the cable operator under this section."

SEC. 19. DEVELOPMENT OF COMPETITION AND DIVERSITY IN VIDEO PROGRAMMING DISTRIBUTION.

Part III of title VI of the Communications Act of 1934 is amended by inserting after section 627 (47 U.S.C. 547) the following new section:

"SEC. 628. DEVELOPMENT OF COMPETITION AND DIVERSITY IN VIDEO PROGRAMMING DISTRIBUTION.

"(a) **PURPOSE.**—The purpose of this section is to promote the public interest, convenience, and necessity by increasing competition and diversity in the multichannel video programming market, to increase the availability of satellite cable programming and satellite broadcast programming to persons in rural and other areas not currently able to receive such programming, and to spur the development of communications technologies.

"(b) **PROHIBITION.**—It shall be unlawful for a cable operator, a satellite cable programming vendor in which a cable operator has an attributable interest, or a satellite broadcast programming vendor to engage in unfair methods of competition or unfair or deceptive acts or practices, the purpose or effect of which is to hinder significantly or to prevent any multichannel video programming distributor from providing satellite cable programming or satellite broadcast programming to subscribers or consumers.

"(c) **REGULATIONS REQUIRED.**—

"(1) **PROCEEDING REQUIRED.**—Within 180 days after the date of enactment of this section, the Commission shall, in order to promote the public interest, convenience, and necessity by increasing competition and diversity in the multichannel video programming market and the continuing development of communications technologies, prescribe regulations to specify particular conduct that is prohibited by subsection (b).

"(2) **MINIMUM CONTENTS OF REGULATIONS.**—The regulations to be promulgated under this section shall—

"(A) establish effective safeguards to prevent a cable operator which has an attributable interest in a satellite cable programming vendor or a satellite broadcast program-

ming vendor from unduly or improperly influencing the decision of such vendor to sell, or the prices, terms, and conditions of sale of, satellite cable programming or satellite broadcast programming to any unaffiliated multichannel video programming distributor;

"(B) prohibit discrimination by a satellite cable programming vendor in which a cable operator has an attributable interest or by a satellite broadcast programming vendor in the prices, terms, and conditions of sale or delivery of satellite cable programming or satellite broadcast programming among or between cable systems, cable operators, or other multichannel video programming distributors, or their agents or buying groups; except that such a satellite cable programming vendor in which a cable operator has an attributable interest or such a satellite broadcast programming vendor shall not be prohibited from—

"(i) imposing reasonable requirements for creditworthiness, offering of service, and financial stability and standards regarding character and technical quality;

"(ii) establishing different prices, terms, and conditions to take into account actual and reasonable differences in the cost of creation, sale, delivery, or transmission of satellite cable programming or satellite broadcast programming;

"(iii) establishing different prices, terms, and conditions which take into account economies of scale, cost savings, or other direct and legitimate economic benefits reasonably attributable to the number of subscribers served by the distributor; or

"(iv) entering into an exclusive contract that is permitted under subparagraph (D);

"(C) prohibit practices, understandings, arrangements, and activities, including exclusive contracts for satellite cable programming or satellite broadcast programming between a cable operator and a satellite cable programming vendor or satellite broadcast programming vendor, that prevent a multichannel video programming distributor from obtaining such programming from any satellite cable programming vendor in which a cable operator has an attributable interest or any satellite broadcast programming vendor in which a cable operator has an attributable interest for distribution to persons in areas not served by a cable operator as of the date of enactment of this section; and

"(D) with respect to distribution to persons in areas served by a cable operator, prohibit exclusive contracts for satellite cable programming or satellite broadcast programming between a cable operator and a satellite cable programming vendor in which a cable operator has an attributable interest or a satellite broadcast programming vendor in which a cable operator has an attributable interest, unless the Commission determines (in accordance with paragraph (4)) that such contract is in the public interest.

"(3) LIMITATIONS.—

"(A) **GEOGRAPHIC LIMITATIONS.**—Nothing in this section shall require any person who is engaged in the national or regional distribution of video programming to make such programming available in any geographic area beyond which such programming has been authorized or licensed for distribution.

"(B) **APPLICABILITY TO SATELLITE RETRANSMISSIONS.**—Nothing in this section shall apply (i) to the signal of any broadcast affiliate of a national television network or other television signal that is retransmitted by satellite but that is not satellite broadcast programming, or (ii) to any internal satellite communication of any broadcast network or cable network that is not satellite broadcast programming.

"(4) **PUBLIC INTEREST DETERMINATIONS ON EXCLUSIVE CONTRACTS.**—In determining whether an exclusive contract is in the public interest for purposes of paragraph (2)(D), the Commission shall consider each of the following factors with respect to the effect of such contract on the distribution of video programming in areas that are served by a cable operator:

"(A) the effect of such exclusive contract on the development of competition in local and national multichannel video programming distribution markets;

"(B) the effect of such exclusive contract on competition from multichannel video programming distribution technologies other than cable;

"(C) the effect of such exclusive contract on the attraction of capital investment in the production and distribution of new satellite cable programming;

"(D) the effect of such exclusive contract on diversity of programming in the multichannel video programming distribution market; and

"(E) the duration of the exclusive contract.

"(5) **SUNSET PROVISION.**—The prohibition required by paragraph (2)(D) shall cease to be effective 10 years after the date of enactment of this section, unless the Commission finds, in a proceeding conducted during the last year of such 10-year period, that such prohibition continues to be necessary to preserve and protect competition and diversity in the distribution of video programming.

"(d) **ADJUDICATORY PROCEEDING.**—Any multichannel video programming distributor aggrieved by conduct that it alleges constitutes a violation of subsection (b), or the regulations of the Commission under subsection (c), may commence an adjudicatory proceeding at the Commission.

"(e) **REMEDIES FOR VIOLATIONS.**—

"(1) **REMEDIES AUTHORIZED.**—Upon completion of such adjudicatory proceeding, the Commission shall have the power to order appropriate remedies, including, if necessary, the power to establish prices, terms, and conditions of sale of programming to the aggrieved multichannel video programming distributor.

"(2) **ADDITIONAL REMEDIES.**—The remedies provided in paragraph (1) are in addition to and not in lieu of the remedies available under title V or any other provision of this Act.

"(f) PROCEDURES.—The Commission shall prescribe regulations to implement this section. The Commission's regulations shall—

"(1) provide for an expedited review of any complaints made pursuant to this section;

"(2) establish procedures for the Commission to collect such data, including the right to obtain copies of all contracts and documents reflecting arrangements and understandings alleged to violate this section, as the Commission requires to carry out this section; and

"(3) provide for penalties to be assessed against any person filing a frivolous complaint pursuant to this section.

"(g) REPORTS.—The Commission shall, beginning not later than 18 months after promulgation of the regulations required by subsection (c), annually report to Congress on the status of competition in the market for the delivery of video programming.

"(h) EXEMPTIONS FOR PRIOR CONTRACTS.—

"(1) IN GENERAL.—Nothing in this section shall affect any contract that grants exclusive distribution rights to any person with respect to satellite cable programming and that was entered into on or before June 1, 1990, except that the provisions of subsection (c)(2)(C) shall apply for distribution to persons in areas not served by a cable operator.

"(2) LIMITATION ON RENEWALS.—A contract that was entered into on or before June 1, 1990, but that is renewed or extended after the date of enactment of this section shall not be exempt under paragraph (1).

"(i) DEFINITIONS.—As used in this section:

"(1) The term 'satellite cable programming' has the meaning provided under section 705 of this Act, except that such term does not include satellite broadcast programming.

"(2) The term 'satellite cable programming vendor' means a person engaged in the production, creation, or wholesale distribution for sale of satellite cable programming, but does not include a satellite broadcast programming vendor.

"(3) The term 'satellite broadcast programming' means broadcast video programming when such programming is retransmitted by satellite and the entity retransmitting such programming is not the broadcaster or an entity performing such retransmission on behalf of and with the specific consent of the broadcaster.

"(4) The term 'satellite broadcast programming vendor' means a fixed service satellite carrier that provides service pursuant to section 119 of title 17, United States Code, with respect to satellite broadcast programming."

SEC. 20. CUSTOMER PRIVACY RIGHTS.

(a) DEFINITIONS.—Section 631(a)(2) of the Communications Act of 1934 (47 U.S.C. 551(a)(2)) is amended to read as follows:

"(2) For purposes of this section, other than subsection (h)—

"(A) the term 'personally identifiable information' does not include any record of aggregate data which does not identify particular persons;

"(B) the term 'other service' includes any wire or radio communications service provided using any of the facilities of a

cable operator that are used in the provision of cable service; and

"(C) the term 'cable operator' includes, in addition to persons within the definition of cable operator in section 602, any person who (i) is owned or controlled by, or under common ownership or control with, a cable operator, and (ii) provides any wire or radio communications service."

(b) **ADDITIONAL ACTIONS REQUIRED.**—Section 631(c)(1) of the Communications Act of 1934 (47 U.S.C. 551(c)(1)) is amended by inserting immediately before the period at the end the following: "and shall take such actions as are necessary to prevent unauthorized access to such information by a person other than the subscriber or cable operator".

SEC. 21. THEFT OF CABLE SERVICE.

Section 633(b) of the Communications Act of 1934 (47 U.S.C. 533(b)) is amended—

(1) in paragraph (2)—

(A) by striking "\$25,000" and inserting "\$50,000";

(B) by striking "1 year" and inserting "2 years";

(C) by striking "\$50,000" and inserting "\$100,000"; and

(D) by striking "2 years" and inserting "5 years"; and

(2) by adding at the end thereof the following new paragraph:

graph:

"(3) For purposes of all penalties and remedies established for violations of subsection (a)(1), the prohibited activity established herein as it applies to each such device shall be deemed a separate violation."

SEC. 22. EQUAL EMPLOYMENT OPPORTUNITY.

(a) **FINDINGS.**—The Congress finds and declares that—

(1) despite the existence of regulations governing equal employment opportunity, females and minorities are not employed in significant numbers in positions of management authority in the cable and broadcast television industries;

(2) increased numbers of females and minorities in positions of management authority in the cable and broadcast television industries advances the Nation's policy favoring diversity in the expression of views in the electronic media; and

(3) rigorous enforcement of equal employment opportunity rules and regulations is required in order to effectively deter racial and gender discrimination.

(b) **STANDARDS.**—Section 634(d)(1) of the Communication Act of 1934 (47 U.S.C. 554(d)(1)) is amended to read as follows:

"(d)(1) Not later than 270 days after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, and after notice and opportunity for hearing, the Commission shall prescribe revisions in the rules under this section in order to implement the amendments made to this section by such Act. Such revisions shall be designed to promote equality of employment opportunities for females and minorities in each of the job categories itemized in paragraph (3)."

(c) **CONTENTS OF ANNUAL STATISTICAL REPORTS.**—Section 634(d)(3) of the Communications Act of 1934 (47 U.S.C. 554(d)(3)) is amended to read as follows:

"(3)(A) Such rules also shall require an entity specified in subsection (a) with more than 5 full-time employees to file with the Commission an annual statistical report identifying by race, sex, and job title the number of employees in each of the following full-time and part-time job categories:

- "(i) Corporate officers.
- "(ii) General Manager.
- "(iii) Chief Technician.
- "(iv) Comptroller.
- "(v) General Sales Manager.
- "(vi) Production Manager.
- "(vii) Managers.
- "(viii) Professionals.
- "(ix) Technicians.
- "(x) Sales Personnel.
- "(xi) Office and Clerical Personnel.
- "(xii) Skilled Craftspersons.
- "(xiii) Semiskilled Operatives.
- "(xiv) Unskilled Laborers.
- "(xv) Service Workers.

"(B) The report required by subparagraph (A) shall be made on separate forms, provided by the Commission, for full-time and part-time employees. The Commission's rules shall sufficiently define the job categories listed in clauses (i) through (vi) of such subparagraph so as to ensure that only employees who are principal decision-makers and who have supervisory authority are reported for such categories. The Commission shall adopt rules that define the job categories listed in clauses (vii) through (xv) in a manner that is consistent with the Commission policies in effect on June 1, 1990. The Commission shall prescribe the method by which entities shall be required to compute and report the number of minorities and women in the job categories listed in clauses (i) through (x) and the number of minorities and women in the job categories listed in clauses (i) through (xv) in proportion to the total number of qualified minorities and women in the relevant labor market. The report shall include information on hiring, promotion, and recruitment practices necessary for the Commission to evaluate the efforts of entities to comply with the provisions of paragraph (2) of this subsection. The report shall be available for public inspection at the entity's central location and at every location where 5 or more full-time employees are regularly assigned to work. Nothing in this subsection shall be construed as prohibiting the Commission from collecting or continuing to collect statistical or other employment information in a manner that it deems appropriate to carry out this section."

(d) **PENALTIES.**—Section 634(f)(2) of such Act (47 U.S.C. 554(f)(2)) is amended by striking "\$200" and inserting "\$500".

(e) **APPLICATION OF REQUIREMENTS.**—Section 634(h)(1) of such Act (47 U.S.C. 554(h)(1)) is amended by inserting before the period the following: "and any multichannel video programming distributor".

(f) **BROADCASTING EQUAL EMPLOYMENT OPPORTUNITY.**—Part I of title III of the Communications Act of 1934 is amended by inserting after section 333 (47 U.S.C. 333) the following new section:

"SEC. 334. LIMITATION ON REVISION OF EQUAL EMPLOYMENT OPPORTUNITY REGULATIONS.

"(a) LIMITATION.—Except as specifically provided in this section, the Commission shall not revise—

"(1) the regulations concerning equal employment opportunity as in effect on September 1, 1992 (47 C.F.R. 73.2080) as such regulations apply to television broadcast station licensees and permittees; or

"(2) the forms used by such licensees and permittees to report pertinent employment data to the Commission.

"(b) MIDTERM REVIEW.—The Commission shall revise the regulations described in subsection (a) to require a midterm review of television broadcast station licensees' employment practices and to require the Commission to inform such licensees of necessary improvements in recruitment practices identified as a consequence of such review.

"(c) AUTHORITY TO MAKE TECHNICAL REVISIONS.—The Commission may revise the regulations described in subsection (a) to make nonsubstantive technical or clerical revisions in such regulations as necessary to reflect changes in technology, terminology, or Commission organization."

(g) STUDY AND REPORT REQUIRED.—Not later than 2 years after the date of enactment of this Act, the Commission shall submit to the Congress a report pursuant to a proceeding to review and obtain public comment on the effect and operation of the amendments made by this section. In conducting such review, the Commission shall consider the effectiveness of its procedures, regulations, policies, standards, and guidelines in promoting equality of employment opportunity and promotion opportunity, and particularly the effectiveness of its procedures, regulations, policies, standards, and guidelines in promoting the congressional policy favoring increased employment opportunity for women and minorities in positions of management authority. The Commission shall forward to the Congress such legislative recommendations to improve equal employment opportunity in the broadcasting and cable industries as it deems necessary.

SEC. 23. JUDICIAL REVIEW.

Section 695 of the Communications Act of 1934 (47 U.S.C. 555) is amended by adding at the end the following new subsection:

"(c)(1) Notwithstanding any other provision of law, any civil action challenging the constitutionality of section 614 or 615 of this Act or any provision thereof shall be heard by a district court of three judges convened pursuant to the provisions of section 2284 of title 28, United States Code.

"(2) Notwithstanding any other provision of law, an interlocutory or final judgment, decree, or order of the court of three judges in an action under paragraph (1) holding section 614 or 615 of this Act or any provision thereof unconstitutional shall be reviewable as a matter of right by direct appeal to the Supreme Court. Any such appeal shall be filed not more than 20 days after entry of such judgment, decree, or order."

SEC. 24. LIMITATION ON FRANCHISING AUTHORITY LIABILITY.

(a) **AMENDMENT.**—Part IV of title VI of the Communications Act of 1934 is amended by inserting after section 635 (47 U.S.C. 555) the following new section:

"SEC. 635A. LIMITATION OF FRANCHISING AUTHORITY LIABILITY.

"(a) **SUITS FOR DAMAGES PROHIBITED.**—In any court proceeding pending on or initiated after the date of enactment of this section involving any claim against a franchising authority or other governmental entity, or any official, member, employee, or agent of such authority or entity, arising from the regulation of cable service or from a decision of approval or disapproval with respect to a grant, renewal, transfer, or amendment of a franchise, any relief, to the extent such relief is required by any other provision of Federal, State, or local law, shall be limited to injunctive relief and declaratory relief.

"(b) **EXCEPTION FOR COMPLETED CASES.**—The limitation contained in subsection (a) shall not apply to actions that, prior to such violation, have been determined by a final order of a court of binding jurisdiction, no longer subject to appeal, to be in violation of a cable operator's rights.

"(c) **DISCRIMINATION CLAIMS PERMITTED.**—Nothing in this section shall be construed as limiting the relief authorized with respect to any claim against a franchising authority or other governmental entity, or any official, member, employee, or agent of such authority or entity, to the extent such claim involves discrimination on the basis of race, color, sex, age, religion, national origin, or handicap.

"(d) **RULE OF CONSTRUCTION.**—Nothing in this section shall be construed as creating or authorizing liability of any kind, under any law, for any action or failure to act relating to cable service or the granting of a franchise by any franchising authority or other governmental entity, or any official, member, employee, or agent of such authority or entity."

(b) **CONFORMING AMENDMENT.**—Section 635(b) of the Communications Act of 1934 (47 U.S.C. 555(b)) is amended by inserting "and with the provisions of subsection (a)" after "subsection (a)".

SEC. 25. DIRECT BROADCAST SATELLITE SERVICE OBLIGATIONS.

(a) **AMENDMENT.**—Part I of title III of the Communications Act of 1934 is further amended by inserting after section 334 (as added by section 22(f) of this Act) the following new section:

"SEC. 335. DIRECT BROADCAST SATELLITE SERVICE OBLIGATIONS.

"(a) **PROCEEDING REQUIRED TO REVIEW DBS RESPONSIBILITIES.**—The Commission shall, within 180 days after the date of enactment of this section, initiate a rulemaking proceeding to impose, on providers of direct broadcast satellite service, public interest or other requirements for providing video programming. Any regulations prescribed pursuant to such rulemaking shall, at a minimum, apply the access to broadcast time requirement of section 312(a)(7) and the use of facilities requirements of section 315 to providers of direct broadcast satellite service providing video programming. Such proceeding also shall examine the opportunities that the establishment of direct broadcast satellite service provides for the principle of localism under this Act, and the methods by which such princi-

ple may be served through technological and other developments in, or regulation of, such service.

"(b) CARRIAGE OBLIGATIONS FOR NONCOMMERCIAL, EDUCATIONAL, AND INFORMATIONAL PROGRAMMING.—

"(1) CHANNEL CAPACITY REQUIRED.—The Commission shall require, as a condition of any provision, initial authorization, or authorization renewal for a provider of direct broadcast satellite service providing video programming, that the provider of such service reserve a portion of its channel capacity, equal to not less than 4 percent nor more than 7 percent, exclusively for noncommercial programming of an educational or informational nature.

"(2) USE OF UNUSED CHANNEL CAPACITY.—A provider of such service may utilize for any purpose any unused channel capacity required to be reserved under this subsection pending the actual use of such channel capacity for noncommercial programming of an educational or informational nature.

"(3) PRICES, TERMS, AND CONDITIONS; EDITORIAL CONTROL.—A provider of direct broadcast satellite service shall meet the requirements of this subsection by making channel capacity available to national educational programming suppliers, upon reasonable prices, terms, and conditions, as determined by the Commission under paragraph (4). The provider of direct broadcast satellite service shall not exercise any editorial control over any video programming provided pursuant to this subsection.

"(4) LIMITATIONS.—In determining reasonable prices under paragraph (3)—

"(A) the Commission shall take into account the non-profit character of the programming provider and any Federal funds used to support such programming;

"(B) the Commission shall not permit such prices to exceed, for any channel made available under this subsection, 50 percent of the total direct costs of making such channel available; and

"(C) in the calculation of total direct costs, the Commission shall exclude—

"(i) marketing costs, general administrative costs, and similar overhead costs of the provider of direct broadcast satellite service; and

"(ii) the revenue that such provider might have obtained by making such channel available to a commercial provider of video programming.

"(5) DEFINITIONS.—For purposes of this subsection—

"(A) The term 'provider of direct broadcast satellite service' means—

"(i) a licensee for a Ku-band satellite system under part 100 of title 47 of the Code of Federal Regulations; or

"(ii) any distributor who controls a minimum number of channels (as specified by Commission regulation) using a Ku-band fixed service satellite system for the provision of video programming directly to the home and licensed under part 25 of title 47 of the Code of Federal Regulations.

“(B) The term ‘national educational programming supplier’ includes any qualified noncommercial educational television station, other public telecommunications entities, and public or private educational institutions.”.

(b) **TECHNICAL AMENDMENT.**—Section 331 of such Act as added by Public Law 97-259 (47 U.S.C. 332) is redesignated as section 332.

SEC. 26. SPORTS PROGRAMMING MIGRATION STUDY AND REPORT.

(a) **STUDY REQUIRED.**—The Federal Communications Commission shall conduct an ongoing study on the carriage of local, regional, and national sports programming by broadcast stations, cable programming networks, and pay-per-view services. The study shall investigate and analyze, on a sport-by-sport basis, trends in the migration of such programming from carriage by broadcast stations to carriage over cable programming networks and pay-per-view systems, including the economic causes and the economic and social consequences of such trends.

(b) **REPORT ON STUDY.**—The Federal Communications Commission shall, on or before July 1, 1993, and July 1, 1994, submit an interim and a final report, respectively, on the results of the study required by subsection (a) to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate. Such reports shall include a statement of the results, on a sport-by-sport basis, of the analysis of the trends required by subsection (a) and such legislative or regulatory recommendations as the Commission considers appropriate.

(c) **ANALYSIS OF PRECLUSIVE CONTRACTS REQUIRED.**—

(1) **ANALYSIS REQUIRED.**—In conducting the study required by subsection (a), the Commission shall analyze the extent to which preclusive contracts between college athletic conferences and video programming vendors have artificially and unfairly restricted the supply of the sporting events of local colleges for broadcast on local television stations. In conducting such analysis, the Commission shall consult with the Attorney General to determine whether and to what extent such preclusive contracts are prohibited by existing statutes. The reports required by subsection (b) shall include separate statements of the results of the analysis required by this subsection, together with such recommendations for legislation as the Commission considers necessary and appropriate.

(2) **DEFINITION.**—For purposes of the subsection, the term “preclusive contract” includes any contract that prohibits—

(A) the live broadcast by a local television station of a sporting event of a local college team that is not carried, on a live basis, by any cable system within the local community served by such local television station; or

(B) the delayed broadcast by a local television station of a sporting event of a local college team that is not carried, on a live or delayed basis, by any cable system within the local community served by such local television station.

SEC. 27. APPLICABILITY OF ANTITRUST LAWS.

Nothing in this Act or the amendments made by this Act shall be construed to alter or restrict in any manner the applicability of any Federal or State antitrust law.

SEC. 28. EFFECTIVE DATE.

Except where otherwise expressly provided, the provisions of this Act and the amendments made thereby shall take effect 60 days after the date of enactment of this Act.

And the House agree to the same.

That the Senate recede from its disagreement to the amendment of the House to the title of the bill and agree to the same.

JOHN D. DINGELL,
EDWARD J. MARKEY,
BILLY TAUZIN,
DENNIS E. ECKART,
THOMAS J. MANTON,
RALPH M. HALL,
CLAUDE HARRIS,

Provided that Mr. Ritter is appointed in place of Mr. Fields for consideration of so much of section 16 of the Senate bill as would add a new section 614(g) of the Communications Act of 1934 and so much of section 5 of the House amendment as would add a new section 614(f) to the Communications Act of 1934.

Managers on the Part of the House.

ERNEST F. HOLLINGS,
DANIEL K. INOUE,
WENDELL FORD,
JOHN C. DANFORTH,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 12) to amend title VI of the Communications Act of 1934 to ensure carriage on cable television of local news and other programming and to restore the right of local regulatory authorities to regulate cable television rates, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The House amendment to the text of the bill struck all of the Senate bill after the enacting clause and inserted a substitute text.

The Senate recedes from its disagreement to the amendment of the House with an amendment that is a substitute for the Senate bill and the House amendment. The differences between the Senate bill, the House amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clerical changes.

SECTION 1—SHORT TITLE

Senate bill

The Senate bill, in Section 1, provides the following short title: "Cable Television Consumer Protection Act of 1992".

House amendment

The House amendment, in Section 1, provides the following short title: "Cable Television Consumer Protection and Competition Act of 1992"

Conference agreement

The conference agreement adopts the House provision.

SECTION 2—FINDINGS; STATEMENT OF POLICY; DEFINITIONS

Senate bill

The Congress finds that:

- (1) Cable rates have increased significantly;
- (2) Without a sufficient number of local television stations and another multichannel video programming distributor, cable systems are not subject to effective competition;
- (3) There is a substantial governmental and First Amendment interest in promoting a diversity of views through multiple technology media;

(4) The cable industry has become a dominant nationwide video medium;

(5) The cable industry has become more concentrated;

(6) Cable rates other than for basic service should be regulated only when needed to control undue market power;

(7) The cable industry has become more vertically integrated into programming, which may harm competing programmers;

(8) There is a substantial governmental and First Amendment interest in ensuring that cable subscribers have access to local noncommercial educational stations to further education and promote diversity and alternative telecommunications services;

(9) There is a substantial governmental interest in having all non-duplicative public television stations available to: promote education and public service programming; ensure the maximum use of the federal contributions to public broadcasting; and ensure that citizens have access to the public service programming responding to their needs and interests which is provided by the public broadcast stations which they help to fund;

(10) There is a substantial governmental interest in ensuring the continuation of locally originated television broadcasting;

(11) Television stations are an important source of local programming, especially for local news and public affairs programming;

(12) Television broadcasting is especially important for those who cannot afford to pay for video programming;

(13) Over the past decade, the market share of cable television has increased, while that of television broadcasting has decreased;

(14) Cable television and television broadcasting increasingly compete for advertising, and more advertising is aired on cable television;

(15) By carrying television broadcast stations, cable operators may increase the viewership of these stations at the expense of programming aired exclusively on cable systems;

(16) As a result, cable operators have an incentive not to carry television broadcast stations, which may jeopardize the future of these stations and the local programming they air;

(17) Subscribers to cable television often do not have the equipment to make it easy to switch between viewing cable television and television broadcast signals over-the-air;

(18) Cable systems are often the single most efficient distribution system for television programming;

(19) Broadcast programming is the most popular programming on cable systems and as a result, cable operators and programmers derive substantial benefits from the carriage of local broadcast signals. Since cable systems can take broadcast signals without the consent of the broadcasters, cable systems now are effectively subsidized by broadcast stations;

(20) Franchising authorities had their authority to oversee the cable industry limited by the 1984 Cable Communications Policy Act, especially with regard to franchise renewals;

(21) Given the lack of clear guidelines in applying the First Amendment to cable franchise decisions, franchising authorities are unreasonably exposed to liability for monetary damages under the Civil Rights Acts;

(22) Cable systems should be encouraged to carry those low power television stations that carry a substantial amount of local programming.

Statement of policy

Section 3 of the Senate bill sets forth the policy of the Congress in this Act to:

- (1) promote information diversity;
- (2) rely on the marketplace, to the maximum extent;
- (3) ensure that cable systems can continue to grow and develop;
- (4) protect consumers by regulating where effective competition does not exist as a substitute for market forces; and
- (5) ensure that consumers and programmers are not harmed by undue market power.

Definitions

The Senate bill amends Section 602 of the Communications Act of 1934 to add the following:

(1) The term "activated channels" means those channels engineered at the headend of a cable system for the provision of services generally available to residential cable subscribers, regardless of whether such services actually are provided, including access channels;

(3) The term "available to a household" or "available to a home" when used in reference to a multichannel video programming distributor means a particular household which is a subscriber or customer of the distributor or a particular household which is actively and currently sought as a subscriber or customer by a multichannel video programming distributor and which is capable of receiving the service offered by the multichannel video programming distributor;

(6) The term "cable community" means all of the households in the geographic area in which a cable system is authorized by a franchising authority to provide cable service, regardless of whether the cable operator is actually providing cable service to such households;

(7) The term "headend" means the location of any equipment of a cable system used to process the signals of television broadcast stations for redistribution to subscribers;

(8) The term "multichannel video programming distributor" means a person who makes available for purchase, by subscribers or customers, multiple channels of video programming;

(9) The term "principal headend" means—(A) the headend, in the case of a cable system with a single headend, (B) in the case of a cable system with more than one headend, the head-

end designated by the cable operator to the Commission as the principal headend;

(10) (A) The term "local commercial television station" means any commercial television station licensed and operating on a channel regularly assigned to its community by the Commission that, with respect to a particular cable system, is licensed to a community whose reference point is within 50 miles of the principal headend and which delivers to the principal headend either a signal level of -45dBm (UHF) or -49dBm (VHF) at the input terminals of the signal processing equipment or a baseband video signal; signals that would be considered distant signals under 17 U.S.C. 111 shall be considered local commercial television stations upon agreement by the station to pay the cable operator the copyright costs of carrying the station;

(B) such term does not include television translator stations, and other passive repeaters;

(11) The term "qualified non-commercial educational television station" means any television broadcast station which (A) under FCC rules is licensed by the FCC as a noncommercial educational television station and which is owned and operated by a public agency or a nonprofit private entity, (B) is owned or operated by a municipality and transmits only non-commercial programs for educational purposes, or (C) has as its licensee an entity which is eligible to receive a community service grant from the Corporation for Public Broadcasting pursuant to 47 U.S.C. 396(k)(6)(b). A "qualified" station also includes any translator which operates at five watts of power or higher and rebroadcasts the signal of a qualified noncommercial educational television station;

(12) The term "qualified low power station" means any station that (a) meets the rules set forth in 47 C.F.R. part 74; (b) meets the minimum number of broadcast hours set forth in 47 C.F.R. part 73 for television broadcast stations; (c) meets the requirements of the Commission that a significant part of its programming be locally originated and produced; (d) meets all of the obligations imposed on television broadcast stations in 47 C.F.R. part 73 with respect to the broadcast of non-entertainment programming; programming and rates involving political candidates and election issues; controversial issues of public importance, and editorials, personal attacks; children's programming; and equal employment opportunity; (e) complies with the interference regulations consistent with their secondary status pursuant to 47 C.F.R. part 74; and (f) is located within 35 miles of the cable system's principal headend, or no more than 20 miles if the station is located in one of the largest 50 markets, and delivers a signal level of -45dBm for UHF and -49dBm for VHF stations to input terminals at the cable headend;

(13) The term "usable activated channels" means activated channels of a cable system, except those channels whose use for the distribution of broadcast signals would conflict with technical and safety regulations as determined by the FCC;

(14) The term "video programmer" means a person engaged in the production, creation, or wholesale distribution of a video programming service for sale. This term applies to those video programmers who enter into arrangements with cable operators for carriage of a programming service;

(15) The term "Line 21 Closed caption" means the data signal which displays a visual depiction of aural information simultaneously being presented on a television channel.

House amendment

Findings

The Congress finds that:

(1) Fair competition in the delivery of television programming should foster the greatest possible choice of programming and should result in lower prices for consumers;

(2) Since passage of the Cable Communications Policy Act of 1984, rates for cable television services have been deregulated in 97 percent of all franchises. A minority of cable operators have abused their deregulated status and their market power and have unreasonably raised cable subscriber rates. The FCC's rules governing local rate regulation will not provide protection for more than two-thirds of the nation's cable subscribers and will not protect subscribers from unreasonable rates in those communities where the rules apply;

(3) In order to protect consumers, it is necessary for the Congress to establish a means for local franchising authorities and the FCC to prevent cable operators from imposing rates upon consumers that are unreasonable;

(4) There is a substantial governmental and First Amendment interest in promoting a diversity of views provided through multiple technology media:

(5) The Federal government has a compelling interest in making all non duplicative local public television services available on cable systems because:

a. public television provides educational and informational programming to the Nation's citizens, thereby advancing the Government's compelling interest in educating its citizens;

b. public television is a local community institution, supported through local tax dollars and voluntary citizen contributions in excess of \$10.8 billion between 1972 and 1990, that provides public service programming that is responsive to the needs and interests of the local community;

c. The Federal Government, in recognition of public television's integral role in serving the educational and informational needs of local communities, has invested more than \$3 billion in public broadcasting between 1969 and 1992; and

d. absent carriage requirements, there is a substantial likelihood that citizens, who have supported local public television services, will be deprived of those services.

(6) The Federal Government also has a compelling interest in having cable systems carry the signals of local commercial television stations because the carriage of such signals;

a. promotes localism and provides a significant source of news, public affairs, and educational programming;

b. is necessary to serve the goals contained in the Communications Act of providing a fair, efficient, and equitable distribution of broadcast services; and

c. will enhance the access to such signals of Americans living in areas where the quality of reception of broadcast signals is poor;

(7) Broadcast television programming is supported by advertising revenues. Such programming is otherwise free to those who own television sets and do not require cable transmission to receive broadcast signals. There is a substantial governmental interest in promoting the continued availability of such free television programming, especially for viewers who are unable to afford other means of receiving programming;

(8) Television broadcasters and cable television operators compete directly for the television viewing audience, programming materials, and advertising revenue. The Federal interest in ensuring that such competition is fair and operates to the benefit of consumers requires that local broadcast stations be made available on cable systems;

(9) Cable systems should be encouraged to carry low power television stations licensed to the communities served by those systems where the low power station creates and broadcasts, as a substantial part of its programming day, local programming;

(10) Secure carriage and channel positioning on cable television systems are the most effective means through which off-air broadcast television can access cable subscribers. In the absence of rules mandating carriage and channel positioning of broadcast television stations, some cable system operators have denied carriage or repositioned the carriage of some television stations;

(11) Cable television systems and broadcast television stations increasingly compete for television advertising and audience. A cable system has a direct financial interest in promoting those channels on which it sells advertising or owns programming. As a result, there is an economic incentive for cable systems to deny carriage to local broadcast signals, or to reposition signals to disadvantageous channel positions, or both. Absent reimposition of must carry and channel positioning requirements, such activity could occur, thereby threatening diversity, economic competition, and the Federal television broadcast allocation structure in local markets across the country;

(12) Cable systems provide the most effective access to television households that subscribe to cable. As a result of the cable operator's provision of this access and the operator's economic incentives to promote channels on which it sells advertising or owns programming, negotiations between cable operators and local broadcast stations have not been an effective mechanism for securing carriage and channel positioning;

(13) Most subscribers to cable television systems do not or cannot maintain antennas to receive broadcast television services, do not have input selector switches to convert from a cable to antenna reception system, or cannot otherwise receive broadcast television services. A government mandate for a substantial societal investment in alternative distribution systems for cable subscribers, such as the "A/B" input selector antenna system, is not an enduring or feasible method of distribution and is not in the public interest;

(14) At the same time, broadcast programming has proven to be the most popular programming on cable systems, and a substantial portion of the benefits for which consumers pay cable systems is derived from carriage of local broadcast signals. Also, cable programming placed on channels adjacent to popular off-the-air signals obtains a larger audience than on other channel positions. Cable systems, therefore, obtain great benefits from carriage of local broadcast signals which they have been able to obtain without the consent of the broadcaster. This has resulted in an effective subsidy of the development of cable systems by local broadcasters. While at one time, when cable systems did not attempt to compete with local broadcasters, this subsidy may have been appropriate, it is no longer and results in a competitive imbalance between the two industries.

The House amendment does not include a Statement of Policy.

The "Definitions" section of the House amendment contains only a definition of "multichannel video programming distributor". That definition is identical to the Senate definition. The remainder of the definitions in the House amendment are dispersed throughout the House amendment.

Conference agreement

Findings

The conference agreement combines, with modification, the findings of the House amendment and the Senate bill, many of which were quite similar. The conferees adopted the following findings:

The Congress finds and declares the following:

(1) Pursuant to the Cable Communications Policy Act of 1984, rates for cable television services have been deregulated in approximately 97 percent of all franchises since December 29, 1986. Since rate deregulation, monthly rates for the lowest priced basic cable service have increased by 40 percent or more for 28 percent of cable television subscribers. Although the average number of basic channels has increased from about 24 to 30, average monthly rates have increased by 29 percent during the same period. The average monthly cable rate has increased almost three times as much as the Consumer Price Index since rate deregulation.

(2) For a variety of reasons, including local franchising requirements and the extraordinary expense of constructing more than one cable television system to serve a particular geographic area, most cable television subscribers have no opportunity to select between competing cable systems. Without the presence of another

multichannel video programming distributor, a cable system faces no local competition. The result is undue market power for the cable operator as compared to that of consumers and video programmers.

(3) There has been a substantial increase in the penetration of cable television systems over the past decade. Nearly 56 million households, over 60 percent of the households with televisions, subscribe to cable television, and this percentage is almost certain to increase. As a result of this growth, the cable television industry has become a dominant nationwide video medium.

(4) The cable industry has become highly concentrated. The effects of such concentration are barriers to entry for new programmers and a reduction in the number of media voices available to consumers.

(5) The cable industry has become vertically integrated; cable operators and cable programmers often have common ownership. As a result, cable operators have the incentive and ability to favor their affiliated programmers. This has made it more difficult for non-cable-affiliated programmers to secure carriage on cable systems. Vertically integrated program suppliers also have the incentive and ability to favor their affiliated cable operators over non-affiliated cable operators and programming distributors using other technologies.

(6) There is a substantial governmental and First Amendment interest in promoting a diversity of views provided through multiple technology media.

(7) There is a substantial governmental and First Amendment interest in ensuring that cable subscribers have access to local non-commercial educational stations which Congress has authorized, as expressed in section 396(a)(5) of the Communications Act of 1934. The distribution of unique noncommercial, educational programming services advances that interest.

(8) The Federal Government has a substantial interest in making all nonduplicative local public television services available on cable systems because—

(A) public television provides educational and informational programming to the Nation's citizens, thereby advancing the Government's compelling interest in educating its citizens;

(B) public television is a local community institution, supported through local tax dollars and voluntary citizen contributions in excess of \$10,800,000,000 since 1972, that provides public service programming that is responsive to the needs and interests of the local community;

(C) the Federal Government, in recognition of public television's integral role in serving the educational and informational needs of local communities, has invested more than \$3,000,000,000 in public broadcasting since 1969; and

(D) absent carriage requirements there is a substantial likelihood that citizens, who have supported local public television services, will be deprived of those services.

(9) The Federal Government has a substantial interest in having cable systems carry the signals of local commercial television stations because the carriage of such signals is necessary to

serve the goals contained in section 307(b) of this Act of providing a fair, efficient, and equitable distribution of broadcast services.

(10) A primary objective and benefit of our Nation's system of regulation of television broadcasting is the local origination of programming. There is a substantial governmental interest in ensuring its continuation.

(11) Broadcast television stations continue to be an important source of local news and public affairs programming and other local broadcast services critical to an informed electorate.

(12) Broadcast television programming is supported by revenues generated from advertising broadcast over stations. Such programming is otherwise free to those who own television sets and do not require cable transmission to receive broadcast signals. There is a substantial governmental interest in promoting the continued availability of such free television programming, especially for viewers who are unable to afford other means of receiving programming.

(13) As a result of the growth of cable television, there has been a marked shift in market share from broadcast television to cable television services.

(14) Cable television systems and broadcast television stations increasingly compete for television advertising revenues. As the proportion of households subscribing to cable television increases, proportionately more advertising revenues will be reallocated from broadcast to cable television systems.

(15) A cable television system carries the signal of a local television broadcaster is assisting the broadcaster to increase its viewership, and thereby attract additional advertising revenues that otherwise might be earned by the cable system operator. As a result, there is an economic incentive for cable systems to terminate the retransmission of the broadcast signal, refuse to carry new signals, or reposition a broadcast signal to a disadvantageous channel position. There is a substantial likelihood that absent the reposition of such a requirement, additional local broadcast signals will be deleted, repositioned, or not carried.

(16) As a result of the economic incentive that cable systems have to delete, reposition, or not carry local broadcast signals, coupled with the absence of a requirement that such systems carry local broadcast signals, the economic viability of free local broadcast television and its ability to originate quality local programming will be seriously jeopardized.

(17) Consumers who subscribe to cable television often do so to obtain local broadcast signals which they otherwise would not be able to receive, or to obtain improved signals. Most subscribers to cable television systems do not or cannot maintain antennas to receive broadcast television services, do not have input selector switches to convert from a cable to antenna reception system, or cannot otherwise receive broadcast television services. The regulatory system created by the Cable Communications Policy Act of 1984 was premised upon the continued existence of mandatory carriage obligations for cable systems, ensuring that local stations would be protected from anticompetitive conduct by cable systems.

(18) Cable television systems often are the single most efficient distribution system for television programming. A government

mandate for a substantial societal investment in alternative distribution systems for cable subscribers, such as the "A/B" input selector antenna system, is not an enduring or feasible method of distribution and is not in the public interest.

(19) At the same time, broadcast programming that is carried remains the most popular programming on cable systems, and a substantial portion of the benefits for which consumers pay cable systems is derived from carriage of the signals of network affiliates, independent television stations, and public television stations. Also cable programming placed on channels adjacent to popular off-the-air signals obtains a larger audience than on other channel positions. Cable systems, therefore, obtain great benefits from local broadcast signals which, until now, they have been able to obtain without the consent of the broadcaster or any copyright liability. This has resulted in an effective subsidy of the development of cable systems by local broadcasters. While at one time, when cable systems did not attempt to compete with local broadcasters for programming, audience, and advertising, this subsidy may have been appropriate, it is so no longer and results in a competitive imbalance between the two industries.

(20) The Cable Communications Policy Act of 1984, in its amendments to the Communications Act of 1934, limited the regulatory authority of franchising authorities over cable operators. Franchising authorities are finding it difficult under the current regulatory scheme to deny renewals to cable systems that are not adequately serving cable subscribers.

(21) Cable systems should be encouraged to carry low power television stations licensed to the communities served by those systems where the low power station creates and broadcasts, as a substantial part of its programming day, local programming.

Statement of policy

The conference agreement adopts the Senate Statement of Policy.

Definitions

The conference agreement adopts the Senate definitions of "activated channels", "multichannel video programming distributor", and "usable activated channels". Most of the remaining definitions have been included in the relevant sections of the conference agreement. Some definitions have been eliminated entirely.

SECTION 3—REGULATION OF RATES

Senate bill

Section 5 of the Senate bill amends Section 623 of the Communications Act to give the FCC, and in some cases, local authorities, the power to regulate the rates for certain cable services and equipment.

Section 623(a) states that governments may only regulate cable systems to the extent provided in this section.

Section 623(b) states that the FCC shall regulate the rates, terms, and conditions for basic cable service not subject to effective competition, and shall regulate equipment used to receive such

service. If fewer than 30 percent of subscribers take only the basic cable tier, then the FCC shall also regulate the next lowest priced service tier subscribed to by at least 30 percent of the system's customers. This subsection also provides that the franchising authority may obtain jurisdiction to regulate cable rates, upon written request, if it adopts laws and regulations conforming to FCC procedures. This subsection further states that a cable operator has no obligation to put programming other than retransmitted local broadcast signals on its basic service tier. A cable operator may file for a basic service rate increase, and such increase shall be granted if it is not acted upon within 180 days of the dated of filing.

Section 623(c) provides that the FCC shall, for systems not subject to effective competition, establish reasonable rates for "cable programming services" if it finds that the current rates are unreasonable. The FCC may act only upon the filing of a complaint that is filed within a reasonable time after a rate increase and that properly establishes that rates are unreasonable. Prior to establishing reasonable rates, the FCC shall determine whether the existing rates can be justified by reasonable business practices. A rate increase can be deemed to result from a change in the service tiers or a change in the per channel price paid by subscribers. In determining whether rates are unreasonable, the FCC shall consider the following factors, among others:

(A) the extent to which service offerings are offered on an unbundled basis;

(B) the rates for similarly-situated cable systems offering comparable services;

(C) the history of rates for such service offerings of the system;

(D) the rates for all cable programming service offerings taken as a whole; and

(E) the rates charged for similar service offerings by cable systems subject to effective competition.

Section 623(d) presumes that effective competition exists when either (1) fewer than 30 percent of the households subscribe to the cable system, or (2) when (A) a sufficient number of local television signals exists and (B) an unaffiliated multichannel video competitor offering comparable service at comparable rates is available to a majority of the homes in the market and is subscribed to by individuals in at least 15 percent of the homes.

Under Section 623(e), cable operators must offer uniform rates throughout the geographic area in which they provide cable service.

Section 623(f) allows governmental authorities to prohibit discrimination among customers of cable service and to require and regulate the installation or rental of equipment used by hearing-impaired individuals.

Section 623(g) defines "cable programming services" to include all video programming services, except basic cable service and premium or pay-per-view channels, and equipment used to receive such services.

Section 623(h) directs the FCC to adopt regulations to prevent cable operators from evading the rate regulation provisions of this section.

House amendment

Section 3 of the House amendment provides a new Section 623 in the Communications Act to ensure that consumers have the opportunity to purchase basic cable service at reasonable rates.

Section 623(a) provides that no government may regulate cable service except as provided under this section. It also expresses a preference for competition and that the rates for cable service shall not be subject to regulation if the cable system is subject to effective competition. This subsection also sets forth the procedures by which a franchising authority may exercise regulatory jurisdiction permitted under this section.

Section 623(b) provides that the FCC shall, by regulation, establish a formula to establish the maximum price of the basic service tier. The formula shall take into account the number of signals carried on the basic tier, the direct costs of providing the services on the basic tier, a portion of the joint and common costs properly allocable to providing such services, a reasonable profit, rates for comparable cable systems that are subject to effective competition, any franchise fee, tax or charge imposed on cable operators or subscribers, and any amount required to satisfy franchise requirements to support public, educational, or governmental channels.

This subsection also directs the Commission to establish a formula to establish the rate for the installation and lease of equipment necessary for subscribers to receive basic cable service and connections for additional television receivers. The Commission shall also establish a formula to identify and allocate costs of satisfying franchise requirements to support public, educational, and governmental channels. The Commission shall also adopt other procedures to implement and enforce the regulations prescribed under this subsection. Such procedures shall require a cable operator to provide 30 days' notice to franchising authorities of any increase of more than five percent in the basic service rate.

Under this subsection, subscription to the basic tier is necessary to receive access to any other tier of service. Under the House amendment, the basic tier must contain all signals required to be carried under sections 614 and 615, any public, educational, and governmental access programming, and any signal of any broadcast station provided by the cable operator, as well as other video programming signals that the cable operator may choose to provide on the basic tier.

This subsection prohibits cable operators from requiring the subscription to any tier other than the basic tier as a condition of access to any programming offered on a per channel or per program basis, except this prohibition shall not apply to a cable system that, because of technical limitations, cannot offer programming on a per channel or per program basis. However, once a cable system's technology is modified to eliminate such technical limitation or after five years, the exception no longer applies. The FCC shall initiate a proceeding to consider the benefits of this prohibition and may extend the five-year period for an additional two years.

The House amendment also provides that cable operators may identify as a separate line item on each bill the amount assessed as

a franchise fee, the amount of supporting public, educational, or governmental channels, any other fee, tax, assessment or charge.

Section 623(c) provides for the regulation of cable programming services other than those on the basic tier and those offered on a per program or per channel basis. The subsection directs the FCC to adopt criteria for identifying unreasonable cable programming rates, procedures to handle complaints filed by franchising authorities or other state or local government entities, including the minimum showing that complaints must make to establish a prima facie case that the rate in question is unreasonable, and procedures to reduce rates that the Commission determines to be unreasonable and to refund the portion of the rates paid by subscribers after the filing of the complaint.

In determining the regulations for these programming services, the Commission shall consider, among other factors: (A) the rates for similarly-situated cable systems; (B) the rates for comparable cable systems subject to effective competition; (C) the history of rates of the cable system; (D) the rates as a whole for all the cable programming, equipment, and services provided by the system; (E) the capital and operating costs of the cable system; (F) the quality and costs of the customer service provided by the cable system; and (G) the revenues received by a cable operator from advertising.

Except for the period before 180 days after the effective date of the Commission's regulations, complaints may be filed only within a reasonable time following a change in rates.

Section 623(d), as added by the House amendment, permits state or franchising authorities to regulate any per-program rates charged by a cable operator for any national championship game between professional teams in baseball, basketball, football, or hockey.

Section 623(e), as added by the House amendment, permits any Federal agency, state or franchising authority to require and regulate the installation or rental of equipment to facilitate the reception of basic cable service by hearing impaired individuals and permits such authorities to prohibit discrimination among customers of basic cable service, except that no such government authority shall prohibit a cable operator from offering reasonable discounts to senior citizens or other economically disadvantaged group discounts.

Section 623(f), as added by the House amendment, prohibits a cable operator from charging a subscriber for any individually-priced channel or for any pay-per-view programming that the subscriber has not affirmatively requested.

Section 623(g), as added by the House amendment, requires cable operators to file annually such financial information as may be needed for purposes of administering and enforcing this section. The Commission shall submit to Congress a report on the financial condition, profitability, rates, and performance of the cable industry by January 1, 1994.

Section 623(h), as added by the House amendment, directs the Commission to establish by regulation standards, guidelines, and procedures to prevent evasions of the rates, services, and other re-

quirements of this section and shall periodically review and revise such standards, guidelines, and procedures.

Section 623(i), as added by the House amendment, directs the Commission to design such regulations to reduce the administrative burdens and cost of compliance for cable systems that have 1,000 or fewer subscribers.

Section 623(j), as added by the House amendment, permits a franchising authority to regulate rates in accordance with an agreement made before July 1, 1990 for the regulation of basic cable service rates.

Section 623(k), as added by the House amendment, directs the Commission to publish quarterly statistical reports on the average rates for basic service and other cable programming and equipment both for cable systems that are and are not subject to effective competition.

Under section 623(l), as added by the House amendment, "effective competition" means (A) fewer than 30 percent of the households in the franchise area subscribe to the cable service of a cable system; (B) the franchise area is served by at least two unaffiliated multichannel video programming distributors offering comparable video programming to at least 50 percent of the households in the franchise area, and at least 15 percent of the households in the franchise area subscribe to the smaller of these two systems; or (C) a multichannel video provider operated by the franchising authority offers video programming to at least 50 percent of the households in that franchise area.

This subsection also defines "cable programming service" as any video programming provided over cable except programming carried on the basic tier and except programming offered on a per channel or per program basis.

Conference agreement

The conference agreement adopts the House language with the amendments described below:

Section 623(b) is amended to state specifically that the Commission shall, by regulation, ensure that the rates for the basic service tier are reasonable, and that the goal of such regulations is to protect subscribers of any cable system that is not subject to effective competition from rates that exceed the rates that would be charged if such cable system were subject to effective competition.

The conference agreement adds a provision that, in prescribing regulations to ensure that rates are reasonable, the FCC shall seek to reduce the administrative burdens on subscribers, cable operators, franchising authorities, and the Commission. Rather than requiring the Commission to adopt a formula to set a maximum rate for basic cable service, the conferees agree to allow the Commission to adopt formulas or other mechanisms and procedures to carry out this purpose. The purpose of these changes is to give the Commission the authority to choose the best method of ensuring reasonable rates for the basic service tier and to encourage the Commission to simplify the regulatory process.

The conferees agreed to the following changes to the factors to be considered in determining the regulations for basic service:

(1) The House language concerning the number of signals carried on the basic service tier is not included in the conference agreement.

(2) The language concerning joint and common costs is clarified to ensure that joint and common costs are recovered in the rates of all cable services, not only in the rates for basic cable service, as determined by the Commission. The language is also clarified to ensure that the direct costs of providing non-basic cable services are not considered joint and common costs and are not recovered in the rates charged for basic cable service. The conferees do not necessarily intend that joint and common costs be recovered on a per channel basis. For instance, the Commission may determine that the amount of joint and common costs allocated to the basic service tier should be less than the amount that would be allocated on a "per channel" basis, both because the basic service tier may contain public, educational, and governmental channels or leased access channels and because the Commission may decide as a policy matter to keep the rates for basic cable service as low as possible. The conferees believe that the basic cable tier should not be required to bear a larger portion of the joint and common costs than what would be allocated on a per channel basis. The regulated, basic tier must not be permitted to serve as the base that allows for marginal pricing of unregulated services.

(3) In addition to considering the revenues received by a cable operator from advertising, the Commission may also consider any other consideration obtained by a cable operator in connection with the basic service tier. This clarification is intended to help to keep the rates for basic cable service low.

(4) The Commission may consider the "reasonably and properly allocable portion" of franchise fees, taxes or other charges imposed by state or local authorities. The purpose of this clarification, as with the previous two clarifications, is to help keep the rates for basic cable service low.

(5) The language concerning "reasonable profit" was amended to strike "on the provision of the basic service tier" and to substitute "consistent with the Commission's obligations to subscribers" to ensure that rates are reasonable. The conferees agree that the cable operators are entitled to earn a reasonable profit. The changes included in the conference agreement reflect the belief that cable operators' profits should be consistent with the goal of ensuring that rates to consumers are reasonable. Further, the changes included in the conference agreement would allow the Commission to examine the profit earned by the cable operators on other cable services as well as the profit earned on the basic cable service tier in determining whether the rates for the basic service tier are reasonable. The intention of this change is, once again, to protect the interests of the consumers of basic cable service.

The conferees agreed to the following changes regarding the regulation of equipment:

(1) Rather than requiring the Commission to adopt a formula to establish the price for equipment, the Commission is given the authority to choose the best method of accomplishing the goals of this legislation.

(2) The "equipment necessary by subscribers to receive the basic service tier" is replaced with "equipment used by subscribers". This change gives the FCC greater authority to protect the interests of the consumer.

In determining the costs of franchise requirements, the conferees agree to replace the term "formula" with "regulations" and "standards" in order to give the Commission the authority to determine the best method of accomplishing the purposes of this legislation.

The conference agreement requires cable operators to give franchise authorities 30 days' notice of any increase in the rate for the basic service tier, rather than limiting the notice requirement to rate increases of more than 5 percent.

The House amendment required that any television broadcast station signal carried by the cable operator be provided on the basic tier, including superstations. The conferees agreed to delete the requirement that superstations be carried on the basic tier. The conference agreement allows cable operators the discretion to decide whether to carry superstations as part of the basic tier or on other tiers.

The House amendment provided an exception to the so-called "anti-buy-through" provision for those systems that, due to technical limitations, could not comply with the requirement. The House amendment limited this exception to five years, but permitted the Commission to extend the waiver for a maximum of two additional years. The conference agreement extends this exception to ten years. The conference agreement also provides that the Commission may grant waivers of the "anti-buy-through" requirement for as long as the Commission determines is reasonable and appropriate if the Commission determines that compliance with the requirement would require the cable operator to increase its rates. Because of these changes, the conference agreement does not include the requirement that the Commission initiate a proceeding to consider the costs and benefits of the "anti-buy-through" provision.

The provision in the House amendment regarding subscriber bill itemization was moved to a separate section of the bill—Section 14.

The conference agreement makes the following changes to section 623(c) concerning the regulation of cable programming services:

The conference agreement permits subscribers, as well as franchising authorities or other relevant State or local government entities, to file complaints. The conference agreement allows the FCC to establish procedures concerning the minimum showing that a complaint must make in order to obtain Commission consideration and resolution of whether the rate in question is unreasonable. The requirement that a complaint must demonstrate a "prima facie case" is not included. The intention of the conferees is to allow consumers to simplify the process of filing complaints concerning unreasonable rates. For instance, it is not the intention of the conferees that the FCC's regulations be so technical or complicated as to require subscribers to retain the services of a lawyer to file a complaint and obtain Commission consideration of the reasonableness of the rate in question.

The conference agreement makes the following changes to the factors to be considered in establishing criteria for determining whether a rate for cable programming service is unreasonable:

(1) The conference agreement allows the Commission to consider the rates as a whole for all cable programming, equipment, and services provided by the cable system, except for the rates for those services offered on a per-program or per-channel basis.

(2) The conference agreement folds the factor concerning the quality and costs of customer service into the factor concerning capital and operating costs.

(3) As in the basic rate regulation section, the Commission is authorized to examine other consideration, in addition to advertising revenues, received by the cable operator in connection with providing cable programming services.

The provision in section 623(d) of the House amendment concerning the regulation of pay-per-view charges for championship sporting events is not included in the conference agreement. The conference agreement substitutes for this provision the Senate provision on uniform rate structure.

The language of section 623(f) from the House amendment regarding negative option billing is replaced with the language in Section 24 of the Senate bill. The language adopted by the conferees ensures that cable operators will not be able to charge customers for tiers or packages of programming services or equipment that they do not affirmatively request as well as individually-priced programs or channels. This provision is not intended to apply to changes in the mix of programming services that are included in various tiers of cable service.

The conference agreement amends section 623(g) to require cable operators to file financial information with the Commission or the franchising authority, as appropriate. The conferees intend that cable operators should file such information as the Commission requires with the franchising authority where the franchising authority is certified to regulate rates. The Congressional report requirement of the House amendment is not included in the conference agreement.

The conference agreement amends section 623(i) to include a reference to evasions that result from retiering as a specific type of evasion that the Commission should consider in establishing standards, guidelines, and procedures to implement the bill. The conferees recognize that many cable operators have shifted cable programs out of the basic service tier into other packages and that this practice can cause subscribers' rates for cable service to increase. The conferees are concerned that such retiering may result in the evasion of the Commission's regulations to enforce the bill. The conferees expect the Commission to adopt procedures to protect consumers from being harmed by any such evasions. In adopting regulations to implement this subsection, the conferees intend that the Commission also adopt regulations to prevent cable operators from evading the "anti-buy-through" provision of the bill.

The conference agreement amends subsection 623(k) as included in the House amendment to require that the Commission publish statistical reports on average cable rates annually rather than quarterly.

Finally, the definition of "cable programming service" is amended to include the installation or rental of equipment used for the receipt of such video programming.

SECTION 4—CARRIAGE OF LOCAL COMMERCIAL TELEVISION SIGNALS AND

SECTION 5—CARRIAGE OF NONCOMMERCIAL EDUCATIONAL TELEVISION

Senate bill

Section 16 of the Senate bill adds a new section 614 to the Communications Act of 1934.

Subsection (a) requires each cable operator to carry the signals of local commercial television stations and qualified low power stations in accordance with the provisions of this section, except to the extent that stations elect to exercise their rights to require retransmission consent under Section 325(b).

Subsection (b)(1)(A) requires a cable operator with twelve or fewer activated channels to carry at least three local commercial television stations, except that if such a system has 300 or fewer subscribers it will not be subject to any carriage requirements under this section provided that the cable system does not delete from carriage the signal of any broadcast station.

Subsection (b)(1)(B) requires cable operators which have more than 12 usable activated channels to carry the signals of local commercial television stations on up to one-third of the number of usable activated channels on their systems.

Subsection (b)(2) provides that, in situations where there are more local commercial television stations than a cable operator is required to carry, the cable operator will have the discretion to choose which of the local commercial stations it will carry except as follows:

(A) A cable operator shall not carry the signal of a qualified low power station instead of the signal of a local commercial station; and

(B) A cable system which chooses to carry an affiliate of a broadcast network (as defined by the FCC) must, if more than one affiliate of a network qualifies for carriage, carry the affiliate of that network whose city of license reference point is closest to the principal headend of the cable system.

Subsection (b)(3)(A) requires that a cable system retransmit the primary audio and video signal in its entirety of each local commercial television station carried on the system, and in addition that, if technically feasible, it also retransmits any program related material transmitted by the broadcaster on a subcarrier or in the vertical blanking interval. In addition, the cable operator is given the option, if a broadcaster implements signal enhancement technology (such as ghost-canceling) which uses information carried in the vertical blanking interval, to install equipment to use that information to process the signal at the cable headend and thus retransmit an enhanced signal to subscribers.

Subsection (b)(3)(B) requires that cable systems carry the entirety of the program schedule of any television station carried on the cable system, except where FCC rules governing network non-duplication, syndicated exclusivity, sports programming, or similar

regulations require the deletion of specific programs by a cable system and permit the substitution of other programs.

Subsection (b)(4)(A) provides that the signals carried under this section shall be retransmitted by cable systems without material degradation. The FCC is directed to adopt any carriage standards which are needed to ensure that, so far as is technically feasible, cable systems afford off-the-air broadcast signals the same quality of signal processing and carriage that they employ for any other type of programming carried on the cable system.

Subsection (b)(4)(B) provides that, when the FCC adopts new standards for broadcast television signals, such as the authorization of broadcast high definition television (HDTV), it shall conduct a proceeding to make any changes in the signal carriage requirements of cable systems needed to ensure that cable systems will carry television signals complying with such modified standards in accordance with the objectives of this section.

Subsection (b)(5) exempts cable systems from the obligation to carry signals that substantially duplicate the signal of another local commercial television station or from having to carry the signal of more than one station affiliated with a particular broadcast network, although the cable system may carry such signals if it chooses. If a cable system chooses to carry duplicating signals of local commercial television stations, all such signals shall be counted towards the cable system's carriage obligations under this section.

Subsection (b)(6) governs the cable system channel position on which signals carried pursuant to this section must be placed. Signals carried pursuant to this section will be carried, at the choice of the station's licensee, on:

- (1) the station's on-air channel position; or
- (2) the channel on which the station was carried on the cable system on July 19, 1985; or
- (3) another channel position mutually agreed upon by the station and the cable operator.

Subsection (b)(7) provides that the signals carried under this section shall be provided to every subscriber of a cable system. The signals of all local commercial television stations carried under this section shall be viewable on each television receiver that the cable operator connects to the cable system or for which it provides a connector. If the cable operator installs wires for connection to a television set or provides materials to connect a television set to the cable system, it must ensure that all must-carry signals can be viewed on that set. If, however, the cable system authorizes subscribers to connect additional receivers, but neither provides the connections nor the equipment or material needed for such connections, its only obligation is to notify subscribers of any broadcast stations carried on the cable system which cannot be viewed via cable without a converter box, and to offer to sell or lease such a converter at reasonable rates.

Subsection (b)(8) requires cable operators to identify, to any person making a request, the signals they carry in fulfillment of their obligations under this section.

Subsection (b)(9) provides that cable systems must give written notice to any local commercial television station carried on the

system at least 30 days before dropping that station from carriage or repositioning it. A cable system may not drop or reposition any such station during a "sweeps" period when ratings services measure local television audiences. This notification provision may not be used to undermine or evade the channel positioning or carriage requirements imposed on cable operators by this section.

Subsection (b)(10) bars cable systems from seeking or accepting any consideration, monetary or otherwise, in exchange for carriage in fulfillment of a cable system's must-carry obligations or for carriage or any of the channel positions guaranteed to stations under this section. Three exceptions are provided: (1) a television station may be required by the cable system to pay any costs necessary for the cable system to receive a good quality signal from the station; (2) a cable operator may accept payments from a local commercial television station carried on the cable system which is a distant signal under section 111 of the Copyright Act in the amount of the incremental copyright charges incurred by the cable system from carriage of such a station; and (3) if a cable system and a local commercial television station entered into an agreement relating to carriage or channel positioning prior to June 26, 1990, the cable system may continue to accept any compensation specified in such agreement for the remaining life of the agreement. In no event, however, shall such agreement or the expiration of such agreement relieve a cable system of any carriage or channel positioning obligations imposed under this section.

Subsection (c) provides that, if the number of local commercial television stations carried on a cable system, either pursuant to the obligations of this section or by agreement between the cable operator and the station, is less than the number of usable activated channels which may be used for local commercial television station signals under this section, the cable operator shall carry any qualified low power stations up to the maximum number of signals which it may be required to carry under this section.

Subsection (d) sets forth the procedures to be followed when a cable system fails to meet the obligations imposed in this section and the remedies for such failure. If a local commercial television station believes that a cable system is not in compliance with this section either with respect to carriage or channel positioning, it must so notify the cable system in writing. Within 30 days of being notified, the cable system must either rectify the noncompliance or explain in writing why it believes that it has complied with the requirements imposed in this section. A television station may seek review of any such response by filing a complaint with the FCC. The FCC must provide the cable system with an opportunity to respond to the complaint and to present data and arguments that it has not failed to meet its obligations. The FCC must issue a decision on the complaint within 120 days after it is filed.

If the FCC determines that a cable system has not met its obligations with respect to carriage or channel positioning of one or more local commercial television signals, it shall either order repositioning of a station's signal or order the cable system to carry a signal for at least one year. This subsection is not intended to deprive federal or state enforcement authorities, consumers, or other private parties of any rights or remedies which they may have

under federal or state laws safeguarding competition or consumer interests; nor is it intended to deprive parties of any contractual remedies they may have under agreements between cable operators and stations.

Subsection (e) prohibits the imposition on cable systems of any responsibility either to provide subscribers with input selector—so-called “A/B”—switches or inform subscribers of them or other similar devices.

Subsection (f) requires the FCC to conduct a rulemaking and issue regulations implementing the requirements imposed by this section within 180 days after enactment.

Subsection (g) requires the FCC to commence an inquiry within 90 days of enactment to determine whether broadcast television stations whose programming consists predominantly of sales presentations are serving the public interest, convenience, and necessity. The FCC must take into consideration the viewing of such stations, the level of competing demands for the channels allocated to such stations, and the role of such stations in providing competition to nonbroadcast services offering similar programming. In the event that the FCC concludes that one or more of such stations are not serving the public interest, convenience, and necessity, the Commission shall allow the licensees a reasonable period within which to provide different programming and shall not deny such stations a renewal expectancy due to their prior programming.

This section of the Senate bill also amends Part II of title VI of the Act to add a new section 615.

Subsection (a) requires cable operators to carry local public broadcast stations.

Subsection (b)(1) requires cable systems to carry all qualified local noncommercial educational television stations that request carriage of a cable operator.

Subsection (b)(2)(A) specifies that a cable system with 12 or fewer usable activated channels is only required to carry the signal of one qualified local public television station, but such operators must comply with subsection (c) and may carry other noncommercial television stations at their discretion.

Subsection (b)(2)(B) provides that, if there are no qualified local public television stations available, and the operator has 12 or fewer usable activated channels, such operator shall select a qualified noncommercial television station to carry. Such operator shall not be required to move any other programming service carried as of March 29, 1990 to meet the requirements of this section.

Subsection (b)(3)(A) requires an operator with 13 to 36 usable activated channels to carry at least one qualified public television station, but not more than three such stations.

Subsection (b)(3)(B) states that cable systems with 13 to 36 channels have an obligation to carry at least one qualified noncommercial educational television station if no such local station is available.

Subsection (b)(3)(C) provides that cable operators with 13 to 36 channels who carry the signal of a qualified noncommercial educational television station affiliated with a State public television network shall not have to carry the signal of additional qualified noncommercial educational television stations affiliated with the same

network, if the programming of the additional station substantially duplicates that of the station receiving carriage.

Subsection (b)(3)(D) requires that cable operators who increased their channel capacity to more than 36 channels on or after March 29, 1990, shall carry the signal of each qualified local noncommercial educational television station requesting carriage subject to subsection (e).

Subsection (c) preserves existing carriage arrangements for qualified noncommercial educational television stations carried on cable systems as of March 29, 1990. This requirement may be waived if agreed to in writing by both the cable operator and the station.

Subsection (d) provides that cable operators required to add qualified noncommercial educational television stations pursuant to this legislation may do so by placing them on unused public, educational, or governmental (PEG) channels not in use for their designated purpose.

Subsection (e) provides that cable operators with 36 or more channels who are required to carry three qualified noncommercial educational television stations shall not be required to carry the signals of additional stations whose programming substantially duplicates the programming of a qualified noncommercial educational television station requesting carriage.

Subsection (f) provides that a qualified local noncommercial educational television station whose signal is carried on a cable system shall not assert its network non-duplication rights provided in 47 C.F.R. 76.92. Non-duplication rights against stations that are not local are preserved.

Subsection (g) requires that a cable system retransmit the primary audio and video signal in its entirety of each local noncommercial educational television station carried on the system, and in addition that, if technically feasible, it also retransmit any program related material transmitted by the broadcaster on a subcarrier or in the vertical blanking interval necessary for the receipt of programming by handicapped persons or for educational or language purposes. Cable operators must provide each qualified local public television stations with bandwidth and technical capacity equivalent to that provided the commercial television broadcast stations carried on their systems. The signals carried under this section shall be retransmitted by cable systems without material degradation. The FCC is directed to adopt any carriage standards which are needed to ensure that, so far as is technically feasible, cable systems afford off-the-air broadcast signals the same quality of signal processing and carriage that they employ for any other type of programming carried on the cable system.

Subsection (g)(3) requires cable systems to carry a qualified local noncommercial educational television station on the channel number on which the station is broadcast over the air, or on the channel on which it was carried on July 19, 1985, at the election of the station, or on such other channel number as is mutually agreed upon. Cable systems must give written notice to any local noncommercial educational television station carried on the system at least 30 days before dropping that station from carriage or repositioning it.

Subsection (g)(4) provides that a cable operator is not required to carry the signal of a station that does not deliver to the cable system's headend a signal of good quality for purposes of retransmission.

Subsection (h) requires cable operators to ensure signals carried pursuant to this section shall be available to every subscriber on the system's lowest priced tier that contains local broadcast signals.

Subsection (i)(1) bars cable systems from seeking or accepting any consideration, monetary or otherwise, in exchange for carriage in fulfillment of a cable system's must-carry obligations or for carriage on any of the channel positions guaranteed to stations under this section; provided, however, that local noncommercial educational television stations may be required by the cable system to pay any costs necessary for the cable system to receive a good quality signal from the station.

Subsection (i)(2) permits a cable operator to accept payments from a local commercial television station carried on its cable system where that station is a distant signal under section 111 of the Copyright Act in the amount of the incremental copyright charges incurred by the cable system from carriage of such a station.

Subsection (j) provides that a qualified noncommercial television station may file a complaint with the FCC if the station believes that a cable operator is not complying with the provisions of this section. The FCC must give cable operators an opportunity to respond and present data, views and arguments to refute any allegations contained in such complaints. The FCC shall resolve any complaints pursuant to this section within 120 days.

Subsection (k) requires cable operators to identify, to any person making a request, the signals they carry in fulfillment of their obligations under this section.

Subsection (l) defines "qualified local noncommercial television station" as a qualified noncommercial educational television station (A) that is licensed to a community whose reference point, as set forth in 47 C.F.R. 76.53 is within 50 miles of the principal headend and (B) whose grade B contour, as defined in 47 C.F.R. 73.683(a) encompasses the principal headend of the cable system.

House amendment

Section 5 of the House amendment amends the Communications Act by adding a new section 614 to define the obligations of cable systems with respect to the carriage of commercial television stations. Section 5 is identical to the new section 614 added by the Senate bill, except as described below.

Subsection (a) of new section 614 in the House amendment does not require cable operators to carry the signals of qualified low power stations in addition to the signals of local commercial television stations. The House amendment makes no exception to the carriage requirements for stations electing to exercise their retransmission rights.

Subsection (b)(2) of the House amendment and subsection (b)(2) of the Senate bill both provides that, in situations where there are more local commercial television stations than a cable operator is

required to carry, the cable operator will have the discretion to choose which of the local commercial stations it will carry. Both the House amendment and the Senate bill require, however, that where a cable system chooses to carry an affiliate of a broadcast network, if more than one affiliate of a network qualifies for carriage, the cable operator must carry the affiliate of that network whose city of license reference point is closest to the principal headend of the cable system. The Senate bill adds a second exception by requiring that a cable operator shall not carry the signal of a qualified low power station instead of the signal of a local commercial station. There is no equivalent exception in the House amendment.

Subsection (b)(6) governs the cable system channel position on which signals carried pursuant to this section must be placed. This provision is identical to subsection (b)(6) of new Section 614 in the Senate bill with one exception. The House amendment adds a fourth option for channel position for the licensee to select: the channel on which the local commercial television station was carried on January 1, 1992.

Subsection (b)(7) of both the House amendment and the Senate bill provides that the signals carried under this section shall be provided to every subscriber of a cable system. The provisions are identical with one exception. The House amendment provides that cable operators must notify subscribers of any broadcast station on the cable system which cannot be viewed via cable without a converter box, and to offer to sell or lease such a converter box to subscribers at rates in accordance with the rate regulation provisions of the House amendment, specifically section 623(b)(1)(B). The Senate bill contains an identical provision, but requires that converter boxes can be offered "at reasonable rates."

The Senate bill, in subsection (c), provides that, if the number of local commercial television stations carried on a cable system is less than the number of usable activated channels which may be used for local commercial television stations signals under this section, the cable operator shall carry any qualified low power stations up to the maximum number of signals required. The House amendment has no equivalent provision.

Subsection (e) of the House amendment requires the FCC to conduct a rulemaking and issue regulations implementing the requirements imposed by this section within 180 days after enactment. The language is identical to subsection (f) of the Senate bill. The House amendment also requires that the implementing regulations include necessary revisions to update Section 76.51 of the Commission's regulations (47 CFR 76.51). There is no comparable provision in the Senate bill.

Subsection (f) of the House amendment provides that a cable operator is not required to carry nor prohibited from carrying on any tier the signal of any commercial television station or video programming service that is predominantly utilized for the transmission of sales presentations or program length commercials.

Subsection (g) of the House amendment states that nothing in this section shall be construed to modify or otherwise affect Title 17 of the United States Code. There is no comparable provision in the Senate bill.

Subsection (h)(1) of the House amendment defines the term "local commercial television station". The definition is similar to the definition in section 4(g) of the Senate bill, which amends Section 602 of the Communications Act to add a new paragraph (20). Subsection (h)(2) of the House amendment excludes low power television stations, television translator stations and passive repeaters from the definition of local commercial television station. The Senate bill defines a local commercial television station as a full power television broadcast station.

Subsection (h)(3) of the House amendment provides that a broadcasting station's market for purposes of this section shall be determined as provided for in the FCC's rules, 47 CFR sec. 73.3555(d)(3)(i), except that, following written request, the FCC may, with respect to a particular television broadcast station, include additional communities within its television market or exclude communities from such station's television market to better effectuate the purposes of this section. The Senate bill includes a similar provision in Section 4(g), the definition of local commercial television station. Subsection (h)(3) of the House amendment also establishes criteria which the FCC shall consider in acting on requests to modify the geographic area in which stations have signal carriage rights. The Senate bill has no comparable provision.

The House amendment, in section 6, amends Part II of title VI of the Communications Act to add a new section 615. This section is identical to the new Section 615 in section 16 of the Senate bill, except as described below.

Subsection (d) of the House amendment is identical to subsection (d) of the Senate bill, with one exception. Subsection (d) provides that cable operators required to add qualified noncommercial educational television stations pursuant to this legislation may do so by placing them on unused public, educational, or governmental (PEG) channels not in use for their designated purpose. The House amendment provides that cable operators may do so subject to the approval of the franchising authority. The Senate bill has no comparable approval requirement.

Subsection (g)(3) of the House amendment requires cable systems to give written notice to any local noncommercial educational television station carried on the system at least 30 days before dropping that station from carriage or repositioning it. Subsection (g)(3) of the Senate bill contains a similar provision. The House amendment defines "repositioning" as (A) assignment to a channel number different from the channel number to which the station was assigned as of March 29, 1990, and (B) deletion of the station from the cable system. The Senate bill provides that repositioning includes deletion. The House amendment provides that the notification provisions of this subsection shall not be used to undermine or evade the channel positioning or carriage requirements imposed upon cable operators under this section. The Senate bill does not have a comparable provision.

Subsection (1) defines "qualified noncommercial educational television station" as a television broadcast station which: (A)(i) is licensed by the FCC as a noncommercial educational television broadcast station and which is owned and operated by a public agency, nonprofit foundation, corporation, or association; and (ii)

has as its licensee an entity which is eligible to receive a community service grant from the Corporation for Public Broadcasting; or (B) is owned and operated by a municipality and transmits predominantly noncommercial programs for educational purposes.

Conference agreement

The conference agreement adopts the House provisions with amendments. The conference agreement includes a technical amendment to clarify that a "local commercial television station" is defined as any television broadcast station other than a "qualified noncommercial educational television station" within the meaning of section 615(l)(1).

In addition, the conference agreement includes the provisions of the Senate bill concerning carriage of low power television stations with the following amendments. The low power provisions of the Senate bill are amended to provide that cable systems with 35 or fewer channels are required to carry one qualified low power television station and cable systems with 36 or more channels are required to carry up to, but not more than two qualified low power television stations. Cable systems that are required to carry two qualified low power television stations may carry one of those stations on any unused public, educational or governmental access channel, subject to the approval of the franchising authority.

The definition of qualified low power stations is amended to replace the requirement that low power television stations carry a substantial amount of locally originated and produced programming with a requirement that the Commission determine that the provision of programming by a low power station would address the local news and information needs of the community to which it is licensed. In addition, low power television stations must provide an over-the-air signal of good quality to the cable system's headend. The Commission shall determine what constitutes a good quality signal for purposes of this subsection.

The Senate bill is amended to limit carriage of low power stations to cable systems serving communities (1) which are in counties in which there is no full power station licensed, and (2) which are located outside the top 160 Metropolitan Statistical Areas. Moreover, the low power station's community of license must have a population of 35,000 or less to qualify for mandatory carriage. The conferees believe that, in communities in which residents have limited access to the signals of full power stations providing local news and information, the public interest in receiving local news and information warrants carriage of such low power stations.

Under the conference agreement, cable operators are not required to carry the signal of any commercial television station or video programming service that is predominantly utilized for the transmission of sales presentations or program length commercials pending the conclusion of a required new FCC proceeding regarding broadcast television stations that are predominantly utilized for the transmission of sales presentations or program length commercials.

The conference agreement requires the FCC to complete a proceeding within 270 days of enactment to determine, notwithstanding prior proceedings, whether broadcast television stations that

are predominantly utilized for the transmission of sales presentations or program length commercials are serving the public interest, convenience, and necessity.

The conference agreement requires the Commission, in conducting such proceeding, to provide appropriate notice and opportunity for public comment. The Commission also is required to consider the viewing of such stations, the level of competing demands for the spectrum allocated to such stations, and the role of such stations in providing competition to nonbroadcast services offering similar programming.

If the Commission concludes that one or more of such stations are serving the public interest, convenience, and necessity, the conference agreement requires the Commission to qualify such stations as local commercial television stations for purposes of must-carry. If the Commission concludes that one or more of such stations are not serving the public interest, convenience, and necessity, the conference agreement requires the Commission to allow the licensees of such stations a reasonable period within which to provide different programming, and shall not deny such stations a renewal expectancy solely because their programming consisted predominantly of sales presentations or program length commercials.

The conferees find that the must-carry and channel positioning provisions in the bill are the only means to protect the federal system of television allocations, and to promote competition in local markets. Other remedies, such as a compliant based, case-by-case process—so-called “negative must-carry”—will not protect these interests. Such post hoc approaches permit significant economic harm to occur before relief is granted. By then it is simply too late. Given the current economic condition of free, local over-the-air broadcasting, an affirmative must-carry requirement is the only effective mechanism to promote the overall public interest.

In no event shall an agreement concerning channel positioning entered into prior to July 1, 1990 or the expiration of such agreement relieve a cable operator of any carriage or channel positioning obligations imposed under this new section 614.

SECTION 6—RETRANSMISSION CONSENT FOR CABLE SYSTEMS

Senate bill

This section amends section 325 of the Act by adding a new subsection (b).

One year after the date of enactment no cable system or other multichannel video programming distributor shall retransmit the signal of a broadcasting station or any part thereof without the express authority of the originating station, except as permitted by section 614.

The Commission will conduct a rulemaking proceeding to establish rules concerning the exercise of stations' rights of mandatory carriage under sections 614. This rulemaking proceeding is to commence within 45 days after enactment and to be completed within six months.

In such rules, the Commission shall require each television station to elect, within one year after enactment, whether to exercise the authority to grant or withhold retransmission consent under

this section or the rights of signal carriage guaranteed by sections 614 of the Act. In situations where there are competing cable systems serving one geographic area, a broadcaster must make the same election with respect to all such competing cable systems.

This subsection makes clear that stations which elect to require retransmission consent from a cable system will not have signal carriage rights under sections 614 or 615 on that cable system for the duration of the stations' election.

By the same token, the election of certain stations to negotiate with cable systems for retransmission consent will not have any effect on the rights of other stations to obtain signal carriage under section 614.

House amendment

No provision.

Conference agreement

The conference agreement adopts the Senate provision. The conferees believe that a broadcaster that elects to exercise its rights to carriage and channel positioning under sections 614 does so with the expectation that it will in fact be carried by the cable system. In the event that the cable system elects not to carry such a signal in fulfillment of its obligations under sections 614, for example, because it already has carried enough local broadcast stations to fill one-third of its channel capacity, the conferees intend that the broadcaster be permitted to reassert its right to require consent before carriage by the cable system under other conditions.

The conference agreement provides that the rights granted to stations under sections 614 and 615 will not be affected by the exercise of the right of retransmission consent by another station. For example, the FCC should not permit a station negotiating for retransmission rights to contract with a cable system for a channel position to which another station is entitled under sections 614 and 615.

In the proceeding implementing retransmission consent, the conferees direct the Commission to consider the impact that the grant of retransmission consent by television stations may have on the rates for the basic service tier and shall ensure that the regulations adopted under this section do not conflict with the Commission's obligations to ensure that rates for basic cable service are reasonable.

The principles that underlie the compulsory copyright license of section 111 of the copyright law (18 U.S.C. 111) are undisturbed by this legislation, but the conferees recognize that the environment in which the compulsory copyright operates may change because of the authority granted broadcasters by section 325(b)(1).

Cable systems carrying the signals of broadcast stations, whether pursuant to an agreement with the station or pursuant to the provisions of new sections 614 and 615 of the Communications Act, will continue to have the authority to retransmit the programs carried on those signals under the section 111 compulsory license. The conferees emphasize that nothing in this bill is intended to abrogate or alter existing program licensing agreements between

broadcasters and program suppliers, or to limit the terms of existing or future licensing agreements.

SECTION 7—AWARD OF FRANCHISES; PROMOTION OF COMPETITION

Senate bill

Section 20 of the Senate bill amends Section 621(a)(1) of the Communications Act of 1934 to add a new provision which prohibits franchising authorities from unreasonably refusing to award additional franchises. Any applicant for a franchise whose application has been denied may appeal such decision pursuant to Section 635 of the Act.

Section 21 of the Senate bill amends Section 621(a) to add a new provision requiring franchising authorities to give a competing cable operator a reasonable amount of time to build its system and provide service to the entire geographic area.

Section 33 of the Senate bill provides that the Act does not prohibit a franchising authority or its affiliate from operating as a multichannel video distributor within the franchising authority's jurisdiction, even where the franchising authority has granted a franchise to one or more multichannel video distributors. This provision also states that nothing in the Communications Act of 1934 requires a local or municipal authority to secure a franchise to operate as a multichannel video program distributor.

House amendment

Section 4 of the House amendment is similar to Section 20 of the Senate bill, but includes five examples of circumstances under which it is reasonable for a franchising authority to deny a franchise:

- technical infeasibility;
- failure of the applicant to assure that it will provide adequate public, educational and governmental access channel capacity, facilities or financial support;
- failure of the applicant to assure that it will provide universal service throughout the franchise area within a reasonable period of time;
- the award would interfere with the ability of the franchising authority to deny renewal of a franchise; and
- failure to demonstrate financial, technical or legal qualifications.

In addition, the House amendment specifies that nothing in this provision limits the ability of franchising authorities to assess franchise fees or taxes for access to public rights of way.

Section 4(b) of the House amendment is identical to section 33 of the Senate bill, permitting municipal authorities to operate cable systems.

Conference agreement

The conferees adopt the Senate provision on award of franchises. The conferees believe that exclusive franchises are directly contrary to federal policy and to the purposes of S. 12, which is intended to promote the development of competition. Exclusive franchises artificially protect the cable operator from competition.

Moreover, at the time most of the exclusive franchises were awarded, local authorities had the power to regulate the rates for basic cable service. However, the 1984 Cable Act repealed local authorities' ability to regulate rates.

The conference agreement adopts Section 21 of the Senate bill on franchise requirements with amendments. The conference agreement adds the provisions from Section 4 of the House amendment that specify that franchising authorities may require applicants for cable franchises to provide adequate assurance that they will provide adequate public access, educational and governmental channels, and may require adequate assurance that the cable operator is financially, technically and legally qualified to operate a cable system.

The conference agreement adopts the House provisions permitting municipal authorities to operate cable systems.

SECTION 8—CONSUMER PROTECTION AND CUSTOMER SERVICE

Senate bill

The Senate bill amends section 632 of the Communications Act of 1934 to require that the FCC adopt customer service standards. The Senate bill also permits franchising authorities to enforce laws or regulations concerning customer service that impose standards that exceed those adopted by the FCC, and grandfathers any standards in existence on the date of enactment.

The Senate bill further requires the FCC, within 180 days, to adopt customer service standards, gives the franchising authorities the power to enforce the FCC standards, and permits a cable operator to file a complaint with the FCC if the operator believes that customer service standards adopted by a franchising authority are not in the public interest.

House amendment

Section 7 of the House amendment amends section 632 of the Communications Act. Section 632(a) allows franchising authorities to establish and enforce, as part of a franchise, or franchise renewal, modification or transfer, customer service requirements, construction schedules and other construction-related requirements.

Section 632(b) requires the FCC, within 180 days of enactment, to establish federal customer service standards which may be required in local cable franchises and enforced by local franchising authorities. Such standards shall include, at a minimum, cable systems office hours and telephone availability, installations, outages and service calls, and communications between the cable operator and the customer (including standards governing bills and refunds).

Section 632(c) makes it clear that nothing in Title VI is intended to interfere with the authority of a state or local governmental body to enact and enforce consumer protection laws, to the extent that the exercise of such authority is not specifically preempted by the Title. Subsection (c) also provides that franchising authorities and cable operators are permitted to agree to customer service requirements, even if those requirements may result in the establishment and enforcement of customer service standards more stringent than the standards established by the FCC under section

632(b). Finally, this subsection preserves local authority to establish and enforce any municipal law or regulation, or any state law, concerning customer service requirements that are more stringent than, or address matters not addressed by, the standards established by the FCC under section 632(b).

Conference agreement

The conference agreement adopts the House provision.

SECTION 9—LEASED COMMERCIAL ACCESS

Senate bill

The Senate bill amends section 612 of the Communications Act. Subsection 612(a) is amended by adding a new clause that provides that among the purposes of this section is "to promote competition in the delivery of diverse sources of video programming".

Subsection (b) of this section amends section 612(c) of the Act to require the FCC to establish the maximum reasonable rate and reasonable terms and conditions for use of these commercial access channels and for the billing of rates to subscribers, and for the collection of revenue from subscribers by the cable operator for such use.

Subsection (d) creates a new section 612(i) which permits a cable operator to provide programming from a qualified minority programming source or sources on up to 33 percent of the cable system's leased access channels. Programming that was provided over a cable system on July 1, 1990 may not qualify as minority programming under this subsection.

House amendment

Section 18 of the House amendment amends section 612(c) of the Communications Act and requires the Commission, within 180 days after the date of enactment of this legislation, to establish, by regulation, (1) a formula to determine the maximum rates a cable operator may charge for commercial use of channel capacity by persons not affiliated with the cable operator; (2) standards concerning the terms and conditions for such use; (3) standards concerning methods for collection and billing for commercial use of such channel capacity; and (4) procedures for the expedited resolution of disputes concerning rates or carriage under this section.

Section 15(b) contains a further amendment to section 612 of the Communications Act and adds a new subsection (i). Under new section 612(i) a cable operator would be permitted to provide programming from a qualified minority or educational programming source or sources on up to 33 percent of the cable system's leased access channels. Programming that already is being provided over a cable system on July 1, 1990 shall not qualify as minority or educational programming for the purpose of this subsection. A qualified minority programming source is defined as a programming source that devotes a significant amount of its programming to coverage of minority viewpoints, or to programming directed at persons of minority groups, and which is more than 50 percent minority-owned as the term "minority" is defined in 47 U.S.C. 309(i)(3)(C)(ii). For the purposes of this subsection, the term "minor-

ity programming sources" is not intended to include television broadcast stations.

A qualified educational programming source is defined as a programming source that devotes significantly all of its programming to educational or instructional programming of such a nature that it promotes public understanding of mathematics, the sciences, the humanities, and the arts and has a documented annual expenditure on programming exceeding \$15 million. Programming expenditures include all annual costs incurred by the channel originator to produce or acquire programs that are scheduled to appear on air, and specifically exclude marketing, promotion, satellite transmission and operational costs, and general administrative costs.

Conference agreement

The conference agreement adopts the Senate provision with an amendment to require the Commission to develop procedures for the expedited resolution of disputes concerning rates or carriage under this section. The conference agreement also amends the Senate provision to permit cable operators to carry qualified educational programming sources, as well as minority programming sources, on up to 33 percent of the cable system's leased access channels and to adopt the definition of qualified educational programming source contained in the House amendment.

SECTION 10—CHILDREN'S PROTECTION FROM INDECENT PROGRAMMING ON LEASED ACCESS CHANNELS

Senate bill

Section 27 of the Senate bill amends Section 612(h) of the Communications Act to permit a cable operator to enforce a written and published policy of prohibiting programming on leased access channels that the cable operator reasonably believes to be indecent. Section 612 is further amended to require the Commission to promulgate regulations designed to limit the access of children to indecent programming on leased access channels.

Section 28 of the Senate bill requires the Commission to promulgate regulations to enable a cable operator to prohibit the use of any public, educational, or governmental access facility for any obscene programming.

Section 29 of the Senate bill amends Section 638 of the Communications Act to impose liability on cable operators for obscene programming carried by the cable operator on any channel designated for public, educational, or governmental use.

House amendment

No provisions.

Conference agreement

The conference agreement adopts the Senate provisions.

SECTION 11—LIMITATIONS ON OWNERSHIP, CONTROL, AND UTILIZATION

Senate bill

The Senate bill amends 613(f) of the Communications Act as follows:

Subsection (f)(1) requires the FCC to establish reasonable limits on (A) the number of cable subscribers that any one cable operator may serve through cable systems owned by the operator or in which the operator has an attributable interest; and (B) the number of channels that can be occupied by a programmer that is owned by a cable operator or in which the operator has an attributable interest.

Subsection (f)(2) requires that the FCC, in establishing reasonable limitations pursuant to subsection (f)(1), shall, among other public interest objectives:

(A) Ensure cable operators, alone or in a group, do not impede the flow of video programming to the consumer;

(B) Ensure cable operators do not favor their own programming or unreasonably restrict the flow of such programming to other video distributors;

(C) Take particular account of the market structure, ownership patterns, or other relationships of the cable industry, including the nature and market power of the local franchise, the joint ownership of cable systems and video programmers, and the various types of non-equity controlling interests;

(D) Take account of any efficiencies and other benefits gained through integration;

(E) Ensure its rules reflect the dynamic nature of the communications marketplace;

(F) Not impose barriers to service in rural areas that do not now have service; and

(G) Not impose limitations which would impair the development of diverse and high quality video programming.

The Senate bill amends Section 613(a) of the Communications Act of 1934 by adding a new paragraph (2) which prohibits a cable operator from owning a multichannel multipoint distribution system (MMDS) or a satellite master antenna television service (SMATV) in the same areas in which it holds a franchise for a cable system.

Paragraph (2)(A) grandfathers all existing MMDS and SMATV systems owned by cable systems on the date of enactment.

Paragraph (2)(B) gives the FCC the authority to grant waivers of the provision where it is necessary to ensure that residents in the cable community receive the cable operator's programming.

The legislation amends Section 613(c) by adding a new subsection (c)(2) which provides that, if ten percent of the households in the U.S. with television sets subscribe to multichannel programming services provided via satellite (regardless of frequency band) directly to home satellite antennae, the FCC shall promulgate appropriate regulations (A) limiting ownership of any distributor of such direct to home satellite service by cable operators and other persons having media interests, and (B) requiring access to such service by programmers not owned or controlled by any distributor of such service.

House amendment

Section 21(a)(1)(A) requires the FCC to conduct a study to determine whether it is necessary or appropriate in the public interest to impose limitations on the extent to which a multichannel video programming distributor may engage in the creation or production of such programming. Section 21(a)(1)(B) requires the FCC to impose limitations on the proportion of the market, at any stage in the distribution of video programming, which may be controlled by a single multichannel video programming distributor or other person engaged in such distribution.

Conference agreement

The conference agreement adopts the Senate provisions with an amendment to include section 21(a)(1)(A) of the House amendment and to delete Section 9(b) of the Senate bill which requires the FCC to adopt cross-ownership restrictions for DBS systems and limitations on vertical integration of DBS systems. In view of the fact that there are no DBS systems operating in the United States at this time, it would be premature to require the adoption of limitations now. However, the conferees expect the Commission to exercise its existing authority to adopt such limitations should it be determined that such limitations would serve the public interest.

SECTION 12—REGULATION OF CARRIAGE AGREEMENTS

Senate bill

The Senate bill requires the FCC to adopt regulations, within one year of enactment, governing program carriage agreements between cable operators and video programmers. The regulations shall:

- (1) prohibit a cable operator or other multichannel video distributor from requiring a financial interest in a programmer as a condition of carriage;
- (2) prohibit a cable operator or other multichannel video distributor from coercing a programmer to provide exclusive rights as a condition of carriage;
- (3) prevent a multichannel video programming distributor from interfering with the ability of an unaffiliated video programmer to compete by discriminating in video distribution on the basis of affiliation or non-affiliation in the selection, terms and conditions of carriage;
- (4) provide for expedited review of any complaints brought pursuant to this provision;
- (5) provide for appropriate penalties and remedies for violations of this section and clarifying that one of the remedies available to the FCC is to require carriage of the program service; and
- (6) provide for the assessment of penalties against persons filing frivolous complaints pursuant to this section.

House amendment

The provisions of the House amendment are virtually identical to those of the Senate bill. However, the prohibitions of the House amendment apply not only to cable operators, but also to other

multichannel video programming distributors. Also, under the House amendment, the FCC would be required to implement regulations to prevent a cable operator or other multichannel video provider from retaliating against a video programming vendor for failing to provide exclusive rights to programming.

Conference agreement

The conference agreement adopts the provisions of the House amendment.

SECTION 13—SALES OF CABLE SYSTEMS

Senate bill

No provision.

House amendment

The House amendment adds a new section to Title VI. Subsection (a) prohibits a cable operator from selling or otherwise transferring ownership in a cable system within a 36-month period following either the acquisition or initial construction of such system, except as provided in this section.

Subsection (b) states that in the case of a sale of multiple systems, if the terms of sale require the buyer subsequently to transfer ownership of one or more such systems to one or more third parties, such transfers shall be considered part of the initial transaction.

Subsection (c) exempts any transfer of ownership interest in any cable system that is not subject to Federal income tax liability and any sale required by operation of any law or any act of any Federal agency, any state or political subdivision of a state, or any franchising authority, or any sale, assignment, or transfer, to one or more purchasers, assignees, or transferees controlled by, controlling, or under common control with, the seller, assignor, or transferor.

Subsection (d) empowers the Commission, consistent with the public interest, to waive the requirements of subsection (a), except that, if a franchise requires franchise authority approval of transfers, the Commission shall not waive such requirements unless the franchise authority has approved such transfer.

Subsection (e) limits the time within which a franchising authority has to disapprove a transfer. After the initial 36-month period following the sale or transfer of ownership of a cable system, if the franchise requires franchising authority approval of a sale or transfer, a franchising authority has 120 days to act upon any request for approval of such sale or transfer that contains or is accompanied by such information as is required in accordance with Commission regulations. If the franchising authority fails to render a final decision on the request within 120 days, the request shall be deemed granted, unless the requesting party and the franchising authority agree to an extension of time.

The 120-day limitation does not apply to any request for approval of a cable sale or transfer subject to this section. The 120-day limitation also would not apply to requests for approval of sales or transfers submitted prior to adoption of the FCC regula-

tions, given that such requests, by definition, could not include the information required to activate the 120-day limit.

Conference agreement

The conference agreement adopts the House amendment, as a new section 617 of the Communications Act of 1934, with an amendment clarifying that the Commission shall use its waiver authority to permit appropriate transfers in cases of default, foreclosure or other financial distress.

SECTION 14—SUBSCRIBER BILL ITEMIZATION

Senate bill

Section 23 of the Senate bill amends Section 622(c) of the Communications Act to permit each cable operator to identify, in accordance with standards prescribed by the Commission, as a separate line item on each bill of each subscriber: (1) the amount of the total bill assessed as a franchise fee and the identity of the franchising authority to which the fee is paid; (2) the amount of the total bill assessed to satisfy any requirements imposed on the cable operator to support public, educational or governmental channels; and (3) the amount of any other tax, fee, assessment or other charge imposed by any governmental authority on the transaction between the operator and the subscriber.

House amendment

The House amendment contains a virtually identical provision.

Conference agreement

The conference agreement adopts the Senate provision with an amendment clarifying that itemization of subscribers' bills under this section must be done in a manner consistent with the regulations prescribed by the Commission pursuant to Section 623 of the Communications Act of 1934.

SECTION 15—NOTICE TO CABLE SUBSCRIBERS ON UNSOLICITED SEXUALLY EXPLICIT PROGRAMS

Senate bill

Section 26 of the Senate bill requires a cable operator who provides a premium channel without charge to any cable subscriber who does not subscribe to such premium channel to, not later than 60 days before such premium channel is provided without charge: (1) notify all cable subscribers that the cable operator plans to provide a premium channel, without charge; (2) notify all cable subscribers of the date(s) on which the cable operator plans to provide a premium channel without charge; (3) notify all subscribers that they have a right to request that the channel carrying the premium channel be blocked; and (4) block the premium channel upon the request of a subscriber. Under this section, the term "premium channel" is defined as any pay service offered on a per channel or per program basis that offers movies rated by the Motion Picture Association of America as X, NC-17 or R.

House amendment

The House amendment contains a virtually identical provision that substitutes 30 days for 60 days for the notification.

Conference agreement

The conference agreement adopts the House provision.

**SECTION 16—TECHNICAL STANDARDS; EMERGENCY ANNOUNCEMENTS;
PROGRAMMING CHANGES; HOME WIRING**

Senate bill

The Senate bill amends section 624(e) of the Communications Act to:

(1) require that within one year after the date of enactment, the FCC shall establish minimum technical standards to ensure adequate signal quality;

(2) permit the FCC to establish standards for technical operation of cable systems and for any other video signals, including high definition television (HDTV);

(3) give the FCC authority to require compliance with and to enforce the technical standards;

(4) require the FCC to establish procedures for complaints asserting violations of the technical standards against cable operators, except that this section does not preclude other remedies permitted under the franchise agreement or Federal or State law; and

(5) preempt the establishment of any technical standards other than those adopted by the FCC.

The Senate bill adds a new subsection at the end of section 624 of the Communications Act of 1934, which requires that, within 120 days after the date of enactment, the FCC shall prescribe rules concerning the disposition of cable-installed wires within the home when the subscriber terminates service.

House amendment

Subsection (a) of Section 11 of the House amendment amends subsection 624(e) of the Communications Act and requires the FCC, within one year after enactment, to adopt minimum technical and signal quality standards for the operation of cable systems which may be required and enforced by franchising authorities as part of a local franchise (including a modification, renewal or transfer thereof pursuant to the provisions of Title VI). This subsection also requires the FCC to adopt national standards and to update periodically its technical standards to reflect improvements in technology.

Subsection (a) also allows franchising authorities to petition the FCC for a waiver to permit the imposition of technical standards more stringent than those prescribed by the FCC under this subsection. In considering requests for such waivers, the Commission may consider the existence of an agreement between the franchising authority and the cable operator to impose on the cable operator technical standards more stringent than the Commission's standards.

Subsection (b) requires the Commission to prescribe, and cable operators to comply with, standards to ensure that viewers of video programming on cable systems are afforded the same emergency information as is afforded by the emergency broadcasting system (EBS) pursuant to Commission regulations in subpart G of part 73, title 47, Code of Federal Regulations.

Subsection (c) authorizes a franchising authority to require a cable operator to do one or more of the following: (1) provide 30 days' advance written notice of any change in channel assignment or in the video programming service provided over any such channel; (2) inform subscribers in writing that comments on programming and channel position changes are being recorded by the franchising authority.

The House amendment, in Section 15, contains a home wiring provision identical to the Senate bill.

Conference agreement

The conference agreement adopts the House provisions.

SECTION 17—CONSUMER ELECTRONICS COMPATIBILITY

Senate bill

The Senate bill amends the Communications Act by adding a new Section 624A. Subsection (b) enumerates findings made by Congress concerning consumer electronics equipment compatibility. Subsection (c) defines terms used in this new section.

Subsection (d) prohibits scrambling or encryption of local broadcast signals, except where necessary to prevent substantial theft of cable service, but permits scrambling and encryption where the use of such technologies does not interfere with the functions of cable subscribers' televisions or videocassette recorders (VCRs). Under this subsection, the Commission is required, within 180 days after the date of enactment of this subsection, to issue regulations under which a cable operator may, if necessary to protect against theft of cable service, scramble or encrypt local broadcast signals. The Commission is required periodically to review and modify such regulations.

Subsection (e) requires the Commission, within 180 days after the date of enactment, to promulgate regulations requiring a cable operator offering any channels the reception of which requires a converter box to: (1) notify subscribers that such converter box may interfere with the enjoyment of certain functions of their televisions or VCRs; (2) offer new and current subscribers who do not receive or do not wish to receive channels that require a converter box for reception the option of having cable service installed or reinstalled by direct connection to the subscriber's television or VCR, without passing through a converter box; and (3) offer subscribers who receive or wish to receive channels that require the use of a converter box the option of having their cable service installed or reinstalled, so that those channels that do not require a converter box for reception are delivered to the subscribers' televisions or VCRs without passing through a converter box.

Subsection (f) requires that any charges for installing or reinstalling cable service pursuant to subsection (e) be subject to the rate regulation provisions under section 623(b)(1).

Subsection (g) requires the Commission, within 180 days after the date of enactment, to promulgate regulations concerning the use of remote control devices. Such regulations shall require a cable operator who offers subscribers the option of renting a remote control unit to: (1) notify subscribers that they may purchase a commercially available remote control device from any source that sells such devices; and (2) specify the types of remote control units that are compatible with the converter box supplied by the cable operator.

Subsection (h) requires the Commission, within 180 days after the date of enactment of this section, to report to the Congress on means of assuring compatibility between televisions and VCRs and cable systems. Such report shall be prepared by the Commission in consultation with representatives of the cable and consumer electronics industries. Subsection (i) requires the Commission to issue such regulations as may be necessary to assure the compatibility interface required under Subsection (h).

House amendment

Section 9 of the House amendment amends the Communications Act of 1934 by adding a new section 624A. Subsection (a) enumerates the findings made by Congress concerning consumer electronics equipment compatibility.

Subsection (b) directs the Commission, within one year after the enactment of this section, in consultation with representatives of the consumer electronics and cable industries, to report to the Congress on the means of assuring compatibility between televisions and VCRs and cable systems, consistent with the need to prevent theft of cable service, so that cable subscribers will be able to enjoy the full benefits of both the programming available on cable systems and the functions available on their televisions and VCRs. Within two years after the date of enactment of this section, the Commission shall issue such regulations as may be necessary to require the use of interfaces that assure such compatibility.

Subsection (c) directs the Commission, within one year after the date of submission of the report required in subsection (b), to prescribe regulations necessary to increase compatibility between television receivers equipped with premium functions and features, VCRs, and cable systems. In prescribing such regulations, the Commission shall consider: (1) the costs and benefits of requiring cable operators to adhere to technical standards for scrambling or encryption of video programming in a manner that will minimize interference with or nullification of the special functions of subscribers' television or VCRs, while providing effective protection against theft or unauthorized reception of cable service, including functions that permit the subscriber (a) to watch a program on one channel while simultaneously using a video cassette recorder to tape a program on another channel or (b) to use a video cassette recorder to tape two consecutive programs that appear on different channels or (c) to use advanced television picture generation and display features; (2) the potential for achieving economies of scale by requir-

ing manufacturers to incorporate technologies to achieve such compatibility in all television receivers; (3) the costs and benefits to consumers of imposing compatibility requirements on cable operators and television manufacturers; and (4) the need for cable operators to protect the integrity of their signals against theft or to protect such signals against unauthorized reception.

Subsection (c) further requires the Commission to prescribe regulations necessary: (1) to establish the technical requirements that permit a television receiver or video cassette recorder to be sold as "cable ready"; (2) to establish procedures by which manufacturers may certify television receivers that comply with the technical requirements established under this subsection in a manner that, at the point of sale, is easily understood by potential purchasers of such receivers; (3) to provide appropriate penalties for willful misrepresentation concerning such certifications; (4) to promote the commercial availability, from cable operators and retail vendors that are not affiliated with cable systems, of converters and remote control devices compatible with converters; (5) to require a cable operator who offers subscribers the option of renting a remote control (i) to notify subscribers that they may purchase a commercially available remote control from any source that sells such devices rather than renting it from the cable operator and (ii) to specify the types of remote controls that are compatible with the converter box supplied by the cable operator; and (6) to prohibit a cable operator from taking any action that prevents or in any way disables the converter box supplied by the cable operator from operating compatibly with the commercially available remote control units.

Subsection (d) requires the Commission to review periodically and, if necessary, to modify the regulations established under this section in light of any actions taken in response to regulations issued under subsection (c) and to reflect improvements and changes in cable systems, television receivers, VCRs, and similar technology.

Subsection (e) directs the Commission to adopt standards under this section that are technologically and economically feasible, taking into account the cost and benefit to cable subscribers and purchasers of television receivers of such standards.

Conference agreement

The conference agreement adopts the House amendment with amendments. Section 624A(a) is amended to include the findings contained in the House amendment.

Section 624A(b)(1) directs the Commission, within one year after the date of enactment of this section, in consultation with representatives of the consumer electronics and cable industries, to report to the Congress on means of assuring compatibility between cable systems and both televisions and VCRs, consistent with the need to prevent theft of cable service, so that cable subscribers will be able to enjoy the full benefit of both the programming available on cable systems and the functions available on their television and VCRs. The Commission is further directed to issue, within 180 days after the date of submission of the report required under this

section, such regulations as are necessary to assure such compatibility.

Section 624A(b)(2) requires the Commission, in issuing the regulations required by section (b)(1), to determine whether and, if so, under what circumstances to permit cable systems to scramble or encrypt signals or to restrict cable systems in the manner in which they encrypt or scramble signals, except that the Commission shall not limit the use of such technology where the use of such technology does not interfere with the functions of subscribers' television receivers or VCRs.

Section 624A(c)(1) requires the Commission, in prescribing the regulations required by this section, to consider: (1) the costs and benefits to consumers of imposing compatibility requirements on cable operators and television manufacturers in a manner that, while providing effective protection against theft or unauthorized reception of cable service, will minimize interference with or nullification of the special functions of subscribers' television receivers or VCRs; and (2) the need for cable operators to protect the integrity of the signals transmitted by the cable operator against theft or to protect such signals against unauthorized reception.

Section 624A(c)(2)(A) requires the Commission, in prescribing regulations under this section, to include such regulations as are necessary to specify the technical requirements with which a television receiver or video cassette recorder must comply in order to be sold as "cable compatible" or "cable ready". The purpose of this paragraph is to make clear what standards need to be met, consistent with and in conformity to the compatibility regulations issued pursuant to subsection (b)(1), in order for televisions or VCRs to be sold as cable ready or cable compatible. The conferees would encourage the development of voluntary efforts by the cable industry and the manufacturers of televisions and VCRs to meet the technical requirements referred to in this paragraph.

Section 624A(c)(2)(B) directs the Commission to require cable operators offering channels whose reception requires a converter box to notify subscribers that they may be unable to benefit from the special functions of their television receivers and VCRs. Under this subsection, cable operators also would be required, to the extent technically and economically feasible, to offer subscribers the option of having all other channels delivered directly to the subscribers' television receivers or VCRs without passing through the converter box.

Section 624A(c) further requires the Commission to prescribe regulations necessary: (1) to promote the commercial availability, from cable operators and retail vendors that are not affiliated with cable systems, of converters and remote control devices compatible with converters; (2) to require a cable operator who offers subscribers the option of renting a remote control to notify subscribers that they may purchase commercially available remote control devices from any source that sells such devices rather than renting them from the cable operator and to specify the types of remote controls that are compatible with the converter box supplied by the cable operator; and (3) to prohibit a cable operator from taking any action that prevents or in any way disables the converter box sup-

plied by the cable operator from operating compatibly with the commercially available remote control units.

Section 624A(d) requires the Commission to review periodically and, if necessary, modify the regulations issued pursuant to this section in light of any actions taken in response to such regulations and to reflect improvements and changes in cable systems, television receivers, VCRs and similar technology.

SECTION 18—FRANCHISE RENEWAL

Senate bill

Section 11 of the Senate bill amends section 626 of the Act to:

(a) clarify that a franchising authority is not required to commence the formal renewal process during the 6 months beginning on the 36th month before the expiration of the franchise;

(b) provide that the formal renewal process can start on the date that the cable operator submits its renewal proposal;

(c) allow the franchising authority to consider in renewal proceedings whether the cable operator has substantially complied with the material terms of the existing franchise and with applicable law throughout the franchise term;

(d) allow the franchising authority to consider the level of service provided over the system throughout the franchise term;

(e) permit a franchising authority to deny a renewal if the cable operator has had notice and an opportunity to cure its failure to comply substantially with the franchise agreement, unless the franchising authority has waived its right to object in writing;

(f) clarify that franchising authorities should be held responsible for non-compliance with the renewal provisions only where a failure to comply actually prejudiced the cable operator; and

(g) provide that any lawful action to revoke a cable operator's franchise for cause shall not be negated by the initiation of renewal proceedings by the cable operator.

House amendment

No provision.

Conference agreement

The conference agreement adopts the Senate provision with the following amendments: Subsection (a) is amended to require that if a cable operator seeks the initiation of a renewal proceeding pursuant to this section, the franchising authority must commence that process within six months of the date that the cable operator submits its request. This amendment is intended to provide the cable operator with the opportunity to initiate the renewal process but give the franchising authority a full six months, after the cable operator submits its request, to take those actions required by this Section.

The conferees have deleted sections 11(c) and 11(d)(2) of the Senate bill which provide that a franchising authority has the

right to consider the quality of service provided by the cable operator throughout the franchise term. The conferees believe that franchising authorities have the duty and authority now to consider the quality of the cable operator's service throughout the franchise term. This provision was removed out of concern that it would be applied where a new cable operator acquires a franchise from the operator who initially entered into the franchise agreement during the pendency of the franchise period. As the franchising authority has the power to approve such a transfer, it should address any deficiencies in the service of the original franchisee at the time of the transfer.

The conference agreement also amends subsection (f) of the Senate provision by replacing "and such failure to comply actually prejudiced the cable operator" with "other than harmless error". This change clarifies that it is the intent of the conferees that minor infractions or deviations from the requirements of this section by a franchising authority shall not be grounds for relief pursuant to the provision of this subsection.

Finally, the conference agreement adopts the language in subsection (g) of the Senate provision.

SECTION 19—DEVELOPMENT OF COMPETITION AND DIVERSITY IN VIDEO PROGRAMMING DISTRIBUTION

Senate bill

The Senate bill bars national and regional cable programmers who are affiliated with cable operators from (1) unreasonably refusing to deal with any multichannel video programming distributor; and (2) discriminating in the price, terms, and conditions in the sale of their programming to multichannel video distributors if such action would impede retail competition.

National and regional programmers affiliated with cable operators are required by the Senate bill to offer their programming to buying groups on terms similar to those offered to cable operators. However, reasonable cost-related conditions and certain other reasonable requirements can be imposed.

The Senate bill also requires any programmer who scrambles satellite cable programming for private viewing to make that programming available for private viewing by C-band home satellite dish owners.

Under the Senate bill, a satellite carrier that provides service pursuant to the provisions of the Home Satellite Viewers Rights Act, 17 U.S.C. Section 119, shall not (1) unreasonably refuse to deal with any distributor of video programming who provides service to home satellite dish subscribers who meet the requirements of the Home Satellite Viewers Right Act, or (2) discriminate in price, terms and conditions of the sale of programming among the distributors to home satellite dish owners qualified under the Home Satellite Viewers Rights Act or between such distributors and other multichannel video distributors.

The Senate bill directs the FCC to prescribe rules to implement this section, including rules for expedited review of complaints made pursuant to this section. This section does not apply to television broadcast signals retransmitted by satellite.

House amendment

The House amendment makes it unlawful for a cable operator or satellite cable programming vendor affiliated with a cable operator to engage in unfair methods of competition or unfair or deceptive acts or practices, the purpose or effect of which is to hinder significantly or prevent any multichannel video programming distributor from providing satellite cable programming to subscribers or consumers. The FCC is required to promulgate regulations to implement this section.

At a minimum, the regulations must prevent a cable operator affiliated with a satellite cable programming vendor from unduly or improperly influencing the vendor's decision to sell, or the price, terms, and conditions of sale of, programming to any unaffiliated multichannel video programming distributor. The regulations also must prohibit a satellite cable programming vendor affiliated with a cable operator from discriminating in the price, terms, and conditions in the sale or delivery of programming to cable operators, other multichannel video programming distributors, and their buying agents. However, such a vendor may impose reasonable cost-related and other reasonable requirements and may grant reasonable volume discounts.

With regard to areas not passed by a cable system, the regulations required by the House amendment prohibit exclusive contracts and other arrangements between a cable operator and a vendor which prevent a multichannel video programming distributor from obtaining programming from a satellite cable programming vendor affiliated with a cable operator.

With regard to areas served by cable operators, the FCC's regulations must prohibit exclusive contracts for satellite cable programming between a cable operator and a satellite cable programming vendor affiliated with a cable interest, unless the FCC determines such a contract is in the public interest. In determining whether such an exclusive contract is in the public interest, the FCC shall consider the effect of the contract on competition in local and national multichannel video programming distribution markets, the effect on competition from multichannel video programming distribution technologies other than cable, the effect on the ability to attract capital investment in new satellite cable programming, the effect on the diversity of programming in the multichannel video programming distribution market, and the duration of the exclusive contract. The House amendment's provisions limiting exclusive contracts in areas served by cable operators expire in 10 years. Exclusive contracts for satellite cable programming that were entered into on or before June 1, 1990 for geographic areas not served by cable operators are grandfathered under the House amendment.

The requirements imposed by this section do not apply to the signals of the broadcast affiliates of the national television networks that are retransmitted by satellite, nor do they apply to internal satellite communications of any broadcast or cable network. Furthermore, the requirements of the House amendment do not require those distributing programming regionally or nationally to

make that programming available in any area beyond which it has been authorized or licensed for distribution.

Under the House amendment, any multichannel video programming distributor aggrieved by conduct that it alleges violates this section or the FCC's implementing regulations may begin an adjudicatory proceeding at the FCC. The FCC shall provide for an expedited review of complaints made pursuant to this section and shall order appropriate remedies.

Conference agreement

The conference agreement adopts the House provisions, with amendments. The conference agreement clarifies that programming distributed by satellite broadcast programming vendors (fixed service satellite carriers) is covered by this section. Satellite broadcast programming vendors are to be held to the same standards as the programming vendors to whom this section applies.

Under the conference agreement, the limitations on exclusive contracts and other arrangements regarding programming distributed within an area served by a cable operator shall expire after 10 years, except that the FCC may extend the limitation if it determines that such limitations are necessary to preserve and protect competition and diversity in the distribution of video programming. For purposes of this section, the conferees intend that an area "served" by a cable system be defined as an area actually passed by a cable system and which can be connected for a standard connection fee.

In lieu of permitting volume discounts, the conference agreement amends the House provision regarding discrimination by satellite cable programming vendors affiliated with cable operators to permit such vendors to establish different prices, terms and conditions which take into account economies of scale, cost savings, or other direct and economic benefits reasonably attributable to the number of subscribers served by the distributor.

In adopting rules under this section, the conferees expect the Commission to address and resolve the problems of unreasonable cable industry practices, including restricting the availability of programming and charging discriminatory prices to non-cable technologies. The conferees intend that the Commission shall encourage arrangements which promote the development of new technologies providing facilities-based competition to cable and extending programming to areas not served by cable.

SECTION 20—CUSTOMER PRIVACY RIGHTS

Senate bill

Section 25 of the Senate bill amends section 631(c)(1) of the Act to require cable operators to ensure that persons, other than the subscriber to the cable system and the cable operator, do not have access to personally-identifiable information about the subscriber.

House amendment

Section 8 of the House amendment redefines the terms "cable operator" and "other service" to ensure that new communications

services provided by cable operators are covered by the privacy protections embodied in section 631 of the Communications Act.

The term "other service" is defined to include any wire or radio communications service provided using any of the facilities of a cable operator that are used in the provision of cable services.

The term "cable operator" is defined so as to include, in addition to those persons within the definition of cable operator in section 602 of the Communications Act, any person who is owned or controlled by or under common ownership or control with, a cable operator, and provides any wire or radio communications service.

Conference agreement

The conference agreement includes both the Senate and the House provisions. The provisions in the House amendment and the Senate bill amend different subsections of Section 631 of the Communications Act of 1934.

The Senate provision amends Section 631(c)(1) to require that cable operators prevent unauthorized access of personally-identifiable information. It is not intended to prevent local franchising authorities or the Commission from acquiring such information as may be necessary to carry out its obligations in compliance with the provisions of the Communications Act of 1934.

SECTION 21—THEFT OF CABLE SERVICE

Senate bill

No provision.

House amendment

Section 20 of the House amendment amends section 633(b) of the Communications Act and brings into conformity penalties and remedies for theft of cable service with those for theft of satellite signals.

Conference agreement

The Conference adopts the House provision.

SECTION 22—EQUAL EMPLOYMENT OPPORTUNITY

Senate bill

No provision.

House amendment

The House amendment amends section 634(d)(1) of the Communications Act to require the Commission, within 270 days after the date of enactment of this legislation, to adopt revisions in its rules that may be necessary to implement the amendments made to section 634.

Section 634(d)(3) is amended to require cable operators, in their annual statistical reports, to identify by race, sex, and job title the number of employees within each job category. The reports shall be made on separate forms, provided by the FCC, for full-time and part-time employees.

Section 634(d)(3) also expands from nine to fifteen the job categories for which employee information is required, by prescribing six new job categories—Corporate Officers, General Manager, Chief Technician, Comptroller, General Sales Manager, and Production Manager.

The FCC is required to prescribe the method by which entities are required to compute and report the number of minorities and women in the job categories above, with the exception of the office and clerical, skilled craftspersons, semiskilled operatives, unskilled laborers, and service workers categories, and the number of minorities and women in all the job categories above in proportion to the total number of qualified minorities and women in the relevant labor market. The report is required to include information on hiring, promotion, and recruitment practices that the FCC will need to evaluate the compliance of entities with this section. The report will be available for public inspection at the entity's central location and at every location where five or more full-time employees are regularly assigned to work. This subsection does not prohibit the FCC from collecting or continuing to collect statistical or other employment information to implement this section.

Section 634(f)(2) is amended to increase the forfeiture penalty for violations of Section 634 from \$200 to \$500 for each violation.

Section 634(h)(1) is amended to extend the requirements of this section to not only cable and satellite master antenna television operators, but to any multichannel video programming distributor.

Subsection (f) requires the Commission, within 240 days after the date of enactment of this legislation, and after opportunity for public discussion, to submit to Congress a comprehensive report on the effectiveness of its procedures, regulations, policies, standards and guidelines governing the EEO performance of the broadcast industry. The Commission is expected to evaluate the effectiveness of its "best efforts" policy and all aspects of its EEO enforcement. The Commission is directed to evaluate the effectiveness of its policies in promoting: (1) equal employment opportunities; (2) opportunities for promotion; and (3) the policy of Congress favoring increased employment opportunities for women and minorities in upper management positions.

The House amendment creates a new Section 617, modeled on the cable EEO industry provisions set forth in Section 634, which codifies and strengthens the Commission's existing equal employment opportunity regulations for broadcast television stations. Section 617 requires the Commission to certify annually that an employment unit or "entity," whether a licensee for a television station eligible for carriage under Section 614 or 615, or an entity engaged primarily in the management or operation of any such licensee, is in compliance with prescribed EEO standards. An entity will be in violation of those standards, and subject to penalties under this section, where it does not provide equal opportunity for women and minorities.

Section 617(a) defines which entities are subject to this section's application, and includes both individual licensees and the companies or other entities that are primarily engaged in their management or operation. Section 617 applies to "entities" (including corporations, partnerships, associations, joint-stock companies,

or trusts) but not to individual persons, that manage or operate licenses.

Subsection (b) sets forth the requirement that each entity afford equal opportunity in employment, and prohibits discrimination on the basis of race, color, religion, national origin, age, or sex.

Subsection (c) requires each employment unit to establish, maintain, and execute a specific prescribed program of practices designed to ensure the development of equality of employment opportunity and to promote the hiring of a workforce that reflects the diversity of the entity's community. This program shall include: defining and monitoring managerial and supervisory performance of equal employment opportunity goals; informing employees, employee organizations, and sources of qualified applicants of the entity's equal employment opportunity policy; and monitoring the entity's job structure and employment practices in order to eliminate discrimination and to ensure equal opportunity throughout its organizational units, occupations, and levels of responsibility.

Subsection (d) requires the Commission, within two years of the effective date of this title, following notice and an opportunity to comment, to establish prescribed rules to enforce and effectuate the requirements of this Section.

The rules adopted under subsection (d) may be amended from time to time by the Commission. Such rules shall specify, among other things, the terms under which covered entities must: disseminate information concerning their equal opportunity programs to applicants, employees, and others; encourage job referrals from minority and women's organizations or other similar potential sources of minority and female applicants; compare their employment profiles and workforce turnover against the availability of women and minorities in their service areas; undertake to offer promotions of minorities and women to positions of greater responsibility; conduct business with minority and female entrepreneurs; and analyze the results of their equal opportunity programs.

Subsection (d) also requires an employment unit with more than 5 full-time employees to file with the Commission, and make available to the public, an annual statistical report profiling the race and sex of its employees in all full-time and part-time job categories.

The report required by subsection (d) must also state the number of job openings that occurred during the year and must either certify that the openings were filled in accordance with the entity's EEO program (required by subsection (c)) or provide the reasons for not filling those openings in accordance with the program.

Subsection (e) requires the Commission to certify annually that licensees and other entities are in compliance with prescribed EEO standards.

Subsection (f) requires the Commission to establish procedures for the enforcement of this Section, including the investigation of complaints of violations for this Section brought by employees, applicants for employment, and other interested persons. Pursuant to its rules, the Commission may investigate such complaints and en-

force the requirements of the Section, or may refer such complaints to any other appropriate Federal agency.

Subsection (g) authorizes the Commission to impose a forfeiture penalty of \$200 per day for each violation of the requirements of this Section. This subsection further provides that a licensee or entity shall not be liable for more than 180 days of forfeiture accruing prior to notification by the Commission of a potential violation.

Subsection (g) also authorizes the FCC to condition, suspend, or revoke any license of any person found liable for forfeiture penalty under this section.

Subsection (h) provides that State and local governments may establish or enforce equal employment opportunity standards consistent with this section, including requirements which impose more stringent standards that are provided under this title. Subsection (h) also authorizes State and local authorities to establish or enforce requirements for conducting business with minority or locally-operated enterprises.

Conference agreement

The agreement of the conferees adopts the House amendment as it applies to cable systems. For television licensees and permittees, the conference agreement codifies the Commission's equal employment opportunity rules, 47 C.F.R. 73.2080. It is the intent of the conferees that this statutory provision be applied in the same manner as were the existing rules on September 9, 1992.

The agreement of the conferees also incorporates into the Communications Act the FCC's forms, FCC Form 395-B annual employment report and the FCC Form 396 Broadcast Equal Opportunity Program Report, for television broadcast stations. It is the intent of the conferees that both of these reports continue to be filed with the FCC by television broadcast licensees and permittees in the same manner, with the same format and content and same terms and conditions as in effect on September 1, 1992.

The agreement of the conferees creates an FCC Mass Media Bureau of mid-license term review of television broadcast stations' workforce employment profiles. It is the intent of the conferees that the Commission's Mass Media Bureau staff compare the workforce data submitted in the first two Forms 395 to be filed following the grant of a license renewal with the station's area labor force, utilizing as the geographic area for comparison that which the Commission staff would customarily use for such purposes (MSA or county), and applying the FCC EEO processing guidelines in effect on September 1, 1992. This review is not intended to establish and shall not be considered or utilized in any manner as establishing a quota for the employment of members of any societal group. If this staff level review suggests that improvement in the station's recruitment practices appears necessary, a staff letter shall be sent to the station licensee so indicating. This letter is not and is not to be treated for any purpose as a Commission sanction of the station's EEO practices.

The conference agreement also gives the Commission the authority to make technical and/or clerical revisions as necessary to respond to changes in technology, terminology and Commission organization.

SECTION 23—JUDICIAL REVIEW

Senate bill

Section 17 of the Senate bill amends section 635 of the Communications Act of 1934 by adding at the end a new subsection (c)(1) that provides that any civil action challenging the constitutionality of new sections 614 or 615 shall be heard by a district court of three judges convened pursuant to the provisions of section 24 of title 28, U.S. Code. New subsection (c)(2) states that an interlocutory or final judgment, decree, or order of the court of three judges under paragraph (1) holding sections 614 or 615 unconstitutional shall be reviewable as a matter of right by direct appeal to the Supreme Court.

House amendment

No provision.

Conference agreement

The conferees adopt the Senate provision.

SECTION 24—LIMITATION OF FRANCHISING AUTHORITY LIABILITY

Senate bill

Section 13 of the Senate bill amends part III of title VI of the Communications Act of 1934 to include a new section 628 which exempts local franchising authorities from liability for damages (except for attorneys' fees and legal costs) in cases where the franchising authorities are charged with violating a cable operator's First Amendment rights arising from actions authorized or required by title VI of the Communications Act of 1934. This provision does not apply to cases where a franchising authority has been found by a final order of a court of binding jurisdiction to have violated a cable operator's First Amendment rights and repeats or continues the violation.

House amendment

Section 17(a) of the House amendment amends part IV of title VI of the Communications Act of 1934 to include a new section 635A. Subsection (a) exempts local franchising authorities from liability for damages in cases arising from regulation of cable service or from a decision of approval or disapproval with respect to a grant, renewal, transfer, or amendment of a franchise. Subsection (b) creates an exception to the exemption for liability set forth in subsection (a) for actions already determined by a final order of a court of binding jurisdiction, no longer subject to appeal, to be in violation of a cable operator's rights.

Subsection (c) clarifies that this section does not limit the relief authorized with respect to any claim against a franchising authority which involves discrimination on the basis of race, color, sex, age, religion, national origin, or handicap.

Subsection (d) clarifies that this section does not create or authorize liability of any kind, under any law, for any action or failure to act relating to cable service or the granting of a franchise by any franchising authority.

Section 17(b) of the House amendment is a conforming amendment.

Conference agreement

The conference agreement adopts the House provision.

SECTION 25—DIRECT BROADCAST SATELLITE SERVICE OBLIGATIONS

Senate bill

Section 22 of the Senate bill directs the Commission, within one year after enactment, to submit to Congress a report analyzing the need for and most appropriate public interest obligations to be imposed upon direct broadcast satellite services in addition to those required below. The Commission is directed to require any DBS provider to reserve between four and seven percent of its channel capacity exclusively for nonduplicated, non-commercial, educational, and informational programming. In complying with this requirement, a DBS provider shall lease its capacity to national educational programming suppliers on reasonable prices, terms, and conditions, and shall not exercise any editorial control over this programming. This section also establishes a study panel, comprised of representatives of the Corporation for Public Broadcasting, the National Telecommunications and Information Administration, and the Office of Technology Assessment. This study panel shall submit a report to Congress within two years after enactment containing recommendations on ways to promote the development of such programming, methods of selecting programming that avoids conflict of interest and editorial control, programming funding sources, and what are reasonable prices, terms, and conditions.

House amendment

Section 21(a)(3) of the House amendment requires the Commission to initiate a rulemaking proceeding, within 180 days, to impose public interest or other requirements on any DBS provider that is not regulated as a common carrier. Such regulations shall, at a minimum, apply the access to broadcast time requirement of section 312(a)(7) of the Communications Act and the use of facilities requirements of section 315 of such Act to DBS systems. The proceeding shall also examine regulations by which DBS systems can further the principle of localism.

Subsection (a)(4) directs the Commission to require DBS providers to reserve between four and seven percent of their channel capacity exclusively for noncommercial public service uses. The DBS provider may recover only the direct costs of transmitting such public service programming. The House amendment includes a similar provision to establish a study panel as the Senate bill, but does not direct the panel to examine what constitute reasonable prices, terms, and conditions for the provision of satellite space for public use channels. The House amendment defines "public service uses" to include (i) programming produced by public telecommunications entities, including independent production services; (ii) programming produced for educational, instructional, or cultural purposes; and (iii) programming produced by any entity to serve the disparate needs of specific communities of interest, including lin-

guistically, distinct groups, minority and ethnic groups, and other groups.

Conference agreement

The conference agreement adopts the House amendment with amendments. The purpose of this section is to define the obligation of direct broadcast satellite service providers to provide a minimum level of educational programming. The four to seven percent reserve gives the Commission the flexibility to determine the amount of capacity to be allotted. The pricing structure was devised to enable national educational programming suppliers to utilize this reserved channel capacity.

Subsection (b)(1) mandates that the Commission require, as a condition of any provision, initial authorization, or renewal, of a DBS system providing video programming, that the provider of such service reserve not less than four percent or more than seven percent of the channel capacity of such service exclusively for non-commercial public service uses. The conferees intend that the Commission consider the total channel capacity of a DBS system in establishing reservation requirements. Accordingly, the Commission may determine to subject DBS systems with relatively large total channel capacity to a greater reservation requirement than systems with relatively less total capacity.

Subsection (b)(2) permits a provider of such service to use any unused channel capacity designated pursuant to this subsection until the use of such channel capacity is obtained for public service use.

Subsection (b)(3) requires that a DBS provider make this channel capacity available to national educational program suppliers at reasonable prices, terms and conditions as determined by the Commission.

Subsection (b)(4) provides that, in determining reasonable prices, the Commission shall consider the non-profit character of the programming provider and any Federal funds used to support the programming such as programming funded by the Corporation for Public Broadcasting or other Federal agencies. Prices to such national educational programming suppliers cannot exceed 50 percent of the total direct costs of making a channel available. Direct costs exclude marketing costs, general administrative costs and similar overhead as well as any costs associated with a lost opportunity for commercial profit.

SECTION 26—SPORTS PROGRAMMING MIGRATION STUDY AND REPORT

Senate bill

No provision.

House amendment

Section 21(b) of the House amendment requires the Commission to study carriage of local, regional, and national sports programming by broadcast stations and cable programming networks and pay-per-view services. The study shall investigate and analyze, on a sport-by-sport basis, trends regarding the migration of such programming from carriage by broadcast stations to carriage over

cable programming networks and pay-per-view systems, including the economic causes and the economic and social consequences of such trends. This subsection further requires the Commission, on or before July 1, 1993 and July 1, 1994, to submit an interim and final report, respectively, on the results of such study to the House Committee on Energy and Commerce and the Senate Committee on Commerce, Science, and Transportation. Such reports shall include a statement of the results, on a sport-by-sport basis, of the analysis of the trends evaluated by the Commission and any appropriate legislative or regulatory recommendations.

Subsection (b)(3) requires the Commission, in conducting the study required by Subsection (b)(4), to analyze the extent to which preclusive contracts between college athletic conferences and video programming vendors have artificially and unfairly restricted the supply of sporting events of local colleges for broadcast on local television stations. Subsection (b)(3) directs the Commission, in conducting such analysis, to consult with the Attorney General to determine whether, and to what extent, such preclusive contracts are prohibited by existing statutes. Under this subsection the Commission is directed to include in the reports required under Subsection (b)(2) the results of the analysis required under Subsection (b)(3) along with any legislative recommendations the Commission considers necessary and appropriate.

Under this subsection, the term "preclusive contract" is defined to include any contract that prohibits: (1) the live broadcast of a sporting event of a local college team that is not carried, on a live basis, by any cable system within the local community served by such local television station; or (2) the delayed broadcast by a local television station of a sporting event of a local college team that is not carried, on a live or delayed basis, by any cable system within the local community served by such local television station.

Conference agreement

The conference agreement adopts the House provision.

SECTION 27—APPLICABILITY OF ANTITRUST LAWS

Senate bill

The Senate bill, in Section 31, provides that nothing in this Act shall be construed to alter or restrict in any manner the applicability of any Federal or State antitrust law.

House amendment

The House amendment, in Section 22, includes a similar provision that states that nothing in the Act shall be construed to create any immunity to any civil or criminal action under any Federal or state antitrust law, or to alter or restrict in any manner the applicability of any Federal or state antitrust law.

Conference agreement

The conference agreement adopts the Senate provision, with a technical amendment to conform the title of the section to be "Applicability of Antitrust Laws." It is the intent of the conferees that

the term "antitrust law" as used in this section include Federal and state unfair competition laws.

SECTION 28—EFFECTIVE DATE

Senate bill

The Senate bill provides that, except as otherwise specified in the legislation, the requirements of the legislation shall be effective 60 days after the date of enactment.

House amendment

The House amendment contains a similar provision.

Conference agreement

The conference agreement adopts the House provision.

REQUIREMENT FOR CERTAIN EQUIPMENT ON TELEVISION SETS

Senate bill

Section 12 of the Senate bill gives the FCC the authority to require that television sets have electronic switches permitting users to change readily among video distributors, provided that the FCC determines that such switches are technically and economically feasible.

House amendment

No provision.

Conference agreement

The conference agreement adopts the House position.

FOREIGN OWNERSHIP

Senate bill

No provision.

House amendment

Section 16 of the House amendment establishes restrictions on the ownership by foreign persons or entities of cable systems and other telecommunications properties. Section 16(a) enumerates the findings made by the Congress regarding foreign ownership of cable systems.

The Congress finds that:

(1) Restrictions on alien or foreign ownership of broadcasting and common carriers first were enacted by Congress in the Radio Act of 1912.

(2) Cable television service currently is available to more than 90 percent of American households, more than 62 percent of American households subscribe to such services, and the majority of viewers rely on cable as the conduit through which they receive terrestrial broadcast signals.

(3) Many Americans receive a significant portion of their daily news, information, and entertainment programming from cable television systems, and such systems should not be controlled by foreign entities.

(4) The policy justifications underlying restrictions on alien ownership of broadcast or common carrier licenses have equal application to alien ownership of cable television systems, DBS systems, and multipoint distribution services.

Subsection (b) amends section 310(b) of the Communications Act and provides that no cable system in the U.S. shall be owned or otherwise controlled by any alien, representative, or corporation as described in section 310(b) of the Communications Act. Subsection (b) also provides that no such alien, representative, or corporation shall be required to sell or dispose of any ownership interest held or contracted for on June 1, 1990 and that no such alien, representative, or corporation that owns, has contracted on or before June 1, 1990 to acquire ownership, or otherwise controls two or more cable systems shall be prohibited from acquiring ownership or control of additional cable systems if the total number of households passed by all the cable systems that such alien, representative, or corporation would, as a result of such acquisition, own or control does not exceed 2,000,000.

Subsection (b) defines, for purposes of such restrictions, broadcast station licenses to include licenses or authorizations for: (1) cable auxiliary relay services; (2) multipoint distribution services; (3) DBS services; and (4) other services with licensed facilities that may be devoted substantially toward providing programming or other information services within the editorial control of the licensee.

Conference agreement

The conference agreement adopts the Senate position.

EXPANSION OF THE RURAL EXEMPTION TO THE CABLE TELEVISION CROSSOWNERSHIP PROHIBITION

Senate bill

Section 32 of the Senate bill amends Section 613(b)(3) of the Communications Act of 1934 to revise the definition of rural area to mean an area that has fewer than 10,000 inhabitants or any territory as defined by the Bureau of Census.

House amendment

No provision.

Conference agreement

The conference agreement adopts the House position. The conferees recognize that currently the Federal Communications Commission has the authority to define a "rural area" for purposes of this section of the Act and is conducting a proceeding to determine if this definition should be expanded from 2,500 persons to 10,000. The conferees do not want to prejudice the outcome of this pending proceeding, nor do they want to limit the authority of the Commission should it be determined that the public interest would be served by a broader or narrower definition of rural area.

LEASE/BUY-BACK AUTHORITY

Senate bill

No provision.

House amendment

Section 4(d) of the House amendment amends Section 613(b)(2) of the Communications Act of 1934 and clarifies that common carriers are not prohibited from providing multiple channels of communication to an entity pursuant to a lease agreement under which the carrier retains, consistent with section 616, the option to purchase such entity upon the taking effect of a future amendment that would permit common carriers generally to provide video programming directly to subscribers in such carrier's telephone service area.

Conference agreement

The conference agreement adopts the Senate position.

JOHN D. DINGELL,
EDWARD J. MARKEY,
BILLY TAUZIN,
DENNIS E. ECKART,
THOMAS J. MANTON,
RALPH M. HALL,
CLAUDE HARRIS,

Provided that Mr. Ritter is appointed in place of Mr. Fields for consideration of so much of section 16 of the Senate bill as would add a new section 614(g) to the Communications Act of 1934 and so much of section 5 of the House amendment as would add a new section 614(f) to the Communications Act of 1934.

Managers on the Part of the House.

ERNEST F. HOLLINGS,
DANIEL K. INOUE,
WENDELL FORD,
JOHN C. DANFORTH,

Managers on the Part of the Senate.